

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1138

Original

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In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

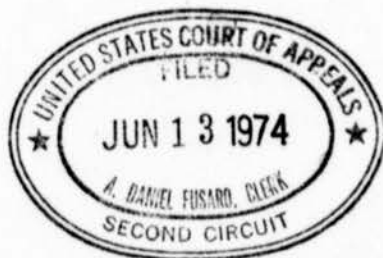
THOMAS JOSEPH CARROLL, VINCENT McCLOSKEY and
WILLIAM McCLOSKEY,

Appellants.

APPELLANTS' APPENDIX

Volume VII, pp. 1801a - 2100a

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(6970)

LUTZ APPELLATE PRINTERS, INC.
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South River, N.J. New York, N.Y. Philadelphia, Pa. Washington, D.C.
(201) 257-6850 (212) 565-6377 (215) 563-5587 (202) 783-7288

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1
2 when they arrived?

3 A Yes, I did.

4 Q Would you tell us what you said and what they
5 said?

6 A Terry Myers arrived first, and he walked in,
7 and he saw me and he says, "Where's Tommy?"

8 I said, "He's in the back."

9 He said, "Well, man, I've got Geoffrey outside.
10 Can I bring him in here?"

11 I said, "Sure."

12 He went outside and brought Geoffrey Mann into
13 Wall's Tavern. At that point we went to the back room
14 in Wall's Tavern and Billy McCloskey and Tommy Carroll
15 joined us there.

16 Q Was there a conversation while you were in the
17 back room?

18 A Yes, there was.

19 Q And would you tell us what was said and who said
20 it, to the best of your recollection?

21 A Tommy Carroll had said to Terry Myers, he said,
22 "What happened?"

23 He said, "What went wrong?"

24 Terry Myers then said, "Well," he said, "we
25 couldn't take him at the original spot because that car

1 was there again."

2 He said, "And we figured maybe we could take
3 him over where," he says, "where it happened."

4 Tommy said to him, "Well, what happened over
5 there? Why was all the shooting?"

6 And Terry said, "Well, when I jumped on the side
7 of the truck," he said, "I put the gun at the dude and told
8 him not to move, and he threw," Terry said that, "The dude
9 threw up his hands, and when he threw up his hands he hit
10 the gun."

11 He said then, Terry said, he saw Geoffrey coming
12 over to get the driver, and the next thing he knew he heard
13 shots, and he saw the van pull away, so he started chasing
14 after the van, because they didn't know how to get out of
15 there.

16 Q Was anything else said?

17 A Yes. Tommy Carroll then said to all of us,
18 that it wasn't such a good idea for us to stay there,
19 and that we should go around to Iodyce's Tavern, and we could
20 discuss it more freely.

21 Q Who was there at that point?

22 A Myself, Billy McCloskey, Tommy Carroll, Terry
23 and Geoffrey.

24 Q Was Chester there?

1 A Not at that point. Chester arrived when we
2
3 eventually got to Iodyce's Tavern.

4 Q When you left Wall's Tavern, where did you go?

5 A We went to Iodyce's Tavern.

6 Q Where is that in relation to Wall's Tavern?

7 A It is on Dell Avenue in North Bergen, which is
8 about three blocks away from Wall's Tavern.

9 Q How did you get to Iodyce's?

10 A We walked around.

11 Q When you got to Iodyce, would you tell us who
12 was there?

13 A There was myself, Billy McCloskey, Tommy Carroll,
14 Terry and Geoffrey.

15 Q And did you have a conversation that you can
16 recall in Iodyce's Tavern?

17 A Yes, I did.

18 Q And would you tell us what was said and who said
19 it?

20 A We were there only a few moments and Chester
21 Crawford came in the door and came over to me, because
22 I was sitting closest to the door, and said, "Man, like,
23 what happened?"

24 I said, "I am not sure. You'd better ask Terry
25 again," at which point he went over to ask Terry Myers what

happened, and then Terry began to explain to him what had happened at the robbery attempt.

Q And did you have a conversation with anyone else that night at Iodyce's?

A Yes, I did.

Q Who was that?

A It was with Tommy Carroll.

Q What did he say and what did you say?

A Tommy Carroll had asked me if I had any money and I said, no, I did not.

And he said, "Well, we are going to have to get some money together," he says, "because these guys are broke and they have got to get back to D.C. tonight."

So I said, "Well, I don't have any money."

So he says, "Well, I'll go home and get a check," he says, "and I'll give it to Ray."

Ray, meaning the owner of Iodyce's.

Q What is Ray's last name, if you know?

A I do not know.

Q And did Tommy Carroll then leave Iodyce?

A Yes, he did.

Q And did you see him again?

A Yes, he came back about ten minutes later.

Q And when he came back did he do anything?

1 A He went over to the owner of the tavern and
2 handed him a check.

3 Q Did you see that check?

4 A I saw him hand him -- no, I did not see the
5 check, no.

6 Q Do you know how much the check was for?

7 A Tommy told me after he came -- he had a dis-
8 cussion with Ray -- that he gave him a check for \$100.

9 Q Was anything else said that you can recall in
10 Iodyce that night?

11 A Not that I can recall.

12 Q Now, Mr. Turner, have you ever discussed the
13 facts of this case --

14 MR. KENNEY: May I withdraw that question, your
15 Honor?

16 Q After April 5, 1973, did you again meet with
17 Terry Myers or Geoffrey Mann?

18 A No, I did not.

19 Q Have you seen them since that time?

20 A The only times I did see them was when I was
21 locked up downstairs and they were passing by.

22 Q Were they in the same cell that you were in?

23 A No.

24 Q Did you ever have occasion to talk to
25

1
2 them?

3 A No, I have not.

4 Q Have you ever --

5 MR. KENNEY: May I withdraw that question.

6 Q Have you ever discussed the facts of this case
7 with Chester Crawford?

8 A No, I have not.

9 MR. KENNEY: May I have just a moment?

10 THE COURT: All right.

11 (Pause.)

12 MR. KENNEY: No further questions.

13 THE COURT: We will adjourn now until
14 tomorrow morning at 10 o'clock.

15 (Jury left the courtroom.)

16 THE COURT: Counsel had indicated they wanted to
17 ask me to indicate certain portions of the charge that they
18 would be interested in hearing.

19 What are those portions, Mr. Drenzo?

20 MR. DRENZO: One of the portions we are interested
21 in hearing, in reference to the instructions on the count
22 in the murder charge.

23 THE COURT: Count 2?

24 MR. DRENZO: Yes, your Honor.

25 THE COURT: All right. Mr. Martin?

kp32

MR. MARTIN: Excuse me, your Honor?

THE COURT: Any portion that you are interested in, aside from count 2?

MR. MARTIN: No. I think I had submitted my proposed --

THE COURT: That isn't what I am requesting, Mr. Martin.

MR. DIRENZO: The portions of the charge that we are asking his Honor to read to us he would.

MR. MARTIN: Fine.

MR. DIRENZO: What portion?

I guess you are a little tired.

THE COURT: Mr. Hafetz?

MR. HAFETZ: I would like to hear the charge pertaining to culpability of defendant Rippy as far as each of the counts.

THE COURT: The conspiracy count is a standard charge. There is no point in hearing that.

MR. HAFETZ: I am concerned in particular whether there is going to be any language of Alsondo or similar cases with regard to the element of knowledge.

THE COURT: I am going to charge Alsondo. I am going to charge the law of Alsondo in the substantive counts 2 and 3.

1 MR. HAFETZ: And in regard to the conspiracy,
2
3 will there be any charge with respect to knowledge being
4 required by Rippy?

5 THE COURT: Whatever the standard charge is
6 in conspiracy I will give.

7 MR. HAFETZ: I am sorry?

8 THE COURT: I will give the standard charge that
9 I normally give in conspiracy. You have a copy of it from
10 the Edelman case.

11 MR. HAFETZ: Would anything specific be said
12 with regard to knowledge of post office robbery being
13 required to find defendant Rippy culpable?

14 THE COURT: The conspiracy charge will have
15 to have such a requirement in it.

16 You are talking about Crimmins. You are not
17 talking about Alsondo.

18 MR. HAFETZ: Well, I lump the two together.

19 THE COURT: Crimmins will be charged in the
20 conspiracy charge.

21 MR. HAFETZ: Will that element of knowledge
22 relate to the time of his participation, in other words,
23 when he joined or allegedly joined or did anything in
24 furtherance of -- will you charge state that he had to have
25 that knowledge at that time as to the Federal Post Office

objective?

THE COURT: Not necessarily, because if the knowledge came to him subsequent but before the event, he still could be held in.

MR. HAFETZ: He still what?

THE COURT: Could be held in. In other words, if there is a conspiracy on March 20th, the color of which has changed on March 30th, and the event occurs on April 5th, if he is still a member of that conspiracy on March 30th, he is bound by the change in color.

MR. HAFETZ: Well, that is my specific question.

THE COURT: Why don't you frame a request then?

MR. HAFETZ: I think I did, Judge.

THE COURT: If you did, then the question will be ruled upon.

MR. HAFETZ: I think it is my requests 1 and 2.

MR. HOPPER: I have the same request as Mr. Durenzo.

MR. HAFETZ: Judge, in regard to the matter of requests, I have submitted requests to the Court. May I ask whether I am bound to turn those over to the government? I have not given copies. I would request your permission not to turn them over.

THE COURT: Why?

1 MR. HAFETZ: Well, thinking in terms -- as I
2 recall a similar problem came up during the Edelman case --
3 I think the requests perhaps relate to elements of the
4 defense and I'd rather not have to tell the government
5 via the instructions I am requesting what I am arguing in
6 terms of defense.
7

8 MR. KENNEY: May we be heard on that, your Honor?
9 I think some years ago, Judge Hand wrote an opinion and
10 said the United States Attorney had to turn over its
11 memorandum of law to defense counsel prior to trial, which
12 came as quite a shock to our office, and I think reduced the
13 number of legal memorandums submitted to the Court in
14 advance of trial.

15 The government's argument at the time was exactly
16 the same as Mr. Hafetz. We ask the Court not to con-
17 sider any charge by the defendant unless a copy is turned
18 over to the government. We think we are entitled to respond
19 to it.

20 MR. HAFETZ: I haven't submitted any memorandum
21 of law. It is only a request of charge.

22 THE COURT: It is the same thing, is it not?

23 How can the government respond unless they
24 know what you are submitting? They are entitled to respond.

25 MR. HAFETZ: May I ask, then, that we wait

1
2 until after motions in the case before I have to submit my
3 charge to the government at that time?

4 THE COURT: Well, I can only do that for one
5 specific request. I can't see a whole line of requests
6 called for by a defense. I would like to know, too.

7 MR. HAFETZ: I have given to the Court everything
8 that I will request during this trial, but what I am
9 asking is that I wait to give to Mr. Kenney copies of all
10 of that until --

11 THE COURT: You have not furnished Mr. Kenney
12 with your requests to charge?

13 MR. HAFETZ: Not now. I would ask to wait until
14 after the government closes its direct case.

15 THE COURT: That's fair enough.

16 MR. KENNEY: Your Honor, the government has
17 just submitted its supplemental requests. The reason
18 I am holding them to this point is, we have one additional
19 one which is not out of the typewriter.

20 THE COURT: I will be upstairs until 8 o'clock
21 tonight, so you can send it upstairs.

22 MR. KENNEY: All right.

23 MR. DIRENZO: Your Honor, if I may, I'm sorry,
24 we had some requests prepared last night, and we didn't
25

complete dictating them until around 11.30. Just get them. But there is a conglomeration of some mistakes in there, and I wouldn't submit them to your honor in the present form.

THE COURT: I will be here till 8 o'clock.

MR. DIRENZO: If we could correct them before that time and get them to you before that time, all well and good. Otherwise, I would most respectfully ask your Honor to consider receiving them by tomorrow morning.

THE COURT: All right, 10 o'clock.

MR. DIRENZO: We have another problem. Can we hold the defendants here a little while because this may --

THE COURT: Obviously. Same arrangements you made the other night.

MR. DIRENZO: As long as the marshals are satisfied to hold them here, so that we can talk to them.

THE COURT: Absolutely.

MR. DIRENZO: Because otherwise it would be very cumbersome.

Thank you.

MR. HOPPER: May I say those requests for Mr. Direnzo we are doing jointly?

THE COURT: All right.

(Adjourned to December 20, 1973, at 10.00 a.m.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Louis Prottitore	1218	1222		
Anthony Sagliano	1224	1232	1238	1240
Vincent Del Principe	1241			
Donald Scott Kennerson	1248	1254		
Geoffrey Matthews Mann (Resumed)		1256	1348	
Michael F. Wall	1351	1354		
John Joseph Turner	1360			

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
35,36		1228
37 through 42		1247

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UNITED STATES OF AMERICA

v.

73 Cr. 855

THOMAS JOSEPH CARROLL, et al.

December 20, 1973
10:10 a.m.

(Trial resumed.)

(In open court; jury not present.)

THE COURT: Mr. Carroll, I understand that Mr. Direnzo informed you he'd be a few minutes late, and that you would consent to the Court proceeding in his absence, is that correct?

DEFENDANT CARROLL: Yes.

THE COURT: Bring the jury in.

MR. KENNEY: Your Honor, before we bring the jury in, I have been downstairs several times. Mr. Turner is not here yet. We have Mr. Schwartz whom we'd like to call as a witness.

THE COURT: All right.

MR. KENNEY: But I'm not sure that he's in the witness room. I will just check on that.

(Pause.)

THE COURT: Do I understand one of your witnesses, either Myers or Mann, said this Exhibit C was not a sworn statement?

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1 MR. KENNEY: No, I don't believe so, your Honor.

3 MR. HOPPER: Yes, he did, your Honor.

4 THE COURT: I think one of them, on cross-
5 examination, said it was not a sworn statement. I think
6 it is a sworn statement.

7 MR. KENNEY: I don't believe the record reflects
8 that. I forget who asked the question, but someone asked
9 him, "Did you sign a sworn statement," and I don't think --

10 THE COURT: He showed it to him and he looked
11 at it and he said, "This is not a sworn statement."

12 MR. KENNEY: No, it was the lawyer, your Honor,
13 who withdrew the question.

14 THE COURT: Let's wait until the record shows
15 up. In any event, it's obvious it's a sworn statement.

16 Where is your witness?

17 MR. KENNEY: Mr. Schwartz is not here, your
18 Honor. We expect him any minute. I don't he's in the
19 courthouse. He should be here.

20 THE COURT: Why don't you do this: Even
21 though Mr. Drenzo is not here, the other three counsel
22 are here, and they asked a question about Count 2.

23 Do you want me to read it out loud here or do
24 you want to go in the robing room?

25 MR. MARTIN: Out loud, your Honor.

THE COURT: Mr. Hafetz.

MR. HAFETZ: Whatever you want.

THE COURT: This doesn't have to go on the record, this is merely for your edification.

(Discussion off the record.)

(Jury present.)

J E R R O L D S C H W A R T Z, called as a
witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Schwartz, what is your occupation?

A I am a sales executive for Harry Schwartz Yarn Company.

Q And would you tell us where Harry Schwartz Yarn Company is located?

A 2815 Patterson Plank Road, North Bergen, New Jersey.

Q Directing your attention to the month of March 1973, would you tell us whether that company owned any trucks at that time?

A Yes, it did.

Q And how many trucks did it own?

A Three trucks.

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Schwartz-direct

Q And what type of trucks were they?

A One was a 1967 GMC stepvan; two others were -- no, the other was a 1966 GMC 16-foot van; and another one was a 20-foot van.

Q And what color was the step-van?

A It was a royal blue color.

Q And can you tell us where you obtained the step-van?

A We bought the step-van from Hertz Truck people, used.

Q Was it repainted after you purchased it?

A No, it was never painted.

Q Do you know where the Metro Adhesive Company is?

A Yes.

Q Would you tell us where that is in relation to the Schwartz Yarn Company?

A They're in the same building as we are, only facing another street.

Q Does the Schwartz Yarn Company have a loading platform?

A Yes.

Q Would you tell us where that is?

A It's on 29th Street, between Tonnelle Avenue and Patterson Plank Road.

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Schwartz-direct-cross

Q And does the Metro Adhesive Company have a loading platform?

A Yes, they do.

Q Where is that platform?

A That's on Patterson Plank Road in an alleyway facing Patterson Plank Road.

Q Now, looking at the building from Patterson Plank Road, can you tell us what signs you would see?

A Yes. It would say Metro Adhesive Company.

Q And is there any sign there for the Schwartz Yarn Company?

A I don't think so. There might be a small sign saying "Harry Schwartz Company" down the steps.

MR. KENNEY: I have no further questions of this witness.

Thank you.

THE COURT: Mr. Martin.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Schwartz, this van you say was a royal blue?

A Yes.

Q It wasn't a green van?

A No.

Q And it wasn't a gray van?

jkmoh 6

Schwartz-cross

1
2 A No.

3 Q What day --

4 MR. MARTIN: Question withdrawn.

5 No further questions.

6 THE COURT: Mr. Hafetz.

7 MR. HAFETZ: No questions.

8 MR. HOPPER: No questions.

9 THE COURT: You may step down.

10 (Witness excused.)

11 MR. KENNEY: Our next witness is cross-examination
12 of Mr. Turner. I understand he's not here yet.

13 THE COURT: Is he there?

14 THE CLERK: No, your Honor.

15 (Pause.)

16 THE COURT: We have to wait for Mr. Turner,
17 so would you mind returning to the jury room, please.

18 (Recess.)

19 (In open court; jury present.)

20 J O H N T U R N E R, resumed.

21 THE CLERK: Mr. Turner, the Court wishes you
22 to know that you are still under oath.

23 THE WITNESS: Yes, I know.

24 THE COURT: You may proceed, Mr. Martin.

25 CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Turner, when you testified yesterday about certain events that you say happened on April 5, 1973, did you omit the fact that on that day at around those events you were in possession of a gun?

A That is correct.

Q Is it true, Mr. Turner -- by the way, what caliber gun was that?

A Excuse me?

Q What caliber gun?

A I don't believe I -- well, the gun that was in my possession was a 22.

Q It wasn't a 32?

A No.

Q Did it have ammunition in it?

A Yes, it did.

Q Can you tell me what became of it?

A I no longer have it.

Q I didn't ask you that, Mr. Turner.

I just asked you if you could tell us what became of it.

A I threw it away.

Q Could you tell us where you threw it away?

A I threw it in the river.

1
2 Q Could you tell us what river?

3 A The Hackensack River.

4 Q When you were arrested for this indictment,
5 did you tell the arresting officials that you had thrown
6 a gun in the Hackensack river?

7 A I had told them that I had thrown the gun in
8 the Hackensack River that morning, yes.

9 Q Did they take you there to ask you where
10 that Hackensack River was, where you had thrown it, what
11 portion?

12 A No, they did not.

13 Q Where did you get that gun, Mr. Turner?

14 A I purchased it approximately two and a half
15 years ago.

16 Q That wasn't the first gun you owned, was it?

17 A No, it was not.

18 Q You have had other guns throughout your life,
19 haven't you?

20 A I had a gun one other time, yes.

21 Q Mr. Turner, yesterday you were describing
22 several occasions when you and a bunch of others were
23 running around down in the area attempting to rob a mail
24 truck; is that correct? Yesterday.

25 A Excuse me, I didn't hear all of the question.

1
2 THE COURT: Keep your voice up, Mr. Martin.

3 MR. MARTIN: I'm sorry, your Honor.

4 Q You testified yesterday that on several occasions
5 you and some other people were down in the downtown area
6 attempting to rob a mail truck; is that correct?

7 A That is correct.

8 Q On any of those occasions did you ever see
9 the guard and the driver on that truck drinking whiskey
10 out of a bottle?

11 A Yes, I did.

12 Q Would you tell us when that was and where that
13 was?

14 A It was on the 30th of March.

15 Q 30th of March.

16 And this whiskey --

17 MR. MARTIN: Question withdrawn.

18 Q And were they drinking this whiskey while
19 they were moving or while they were parked?

20 A While they were stopped behind us.

21 Q While they were stopped behind you.

22 And did you see this from --

23 MR. MARTIN: Question withdrawn.

24 Q From what vantage point did you see this?

25 A When I leaned out the right side of the step-van

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Turner-cross

which I was in and I looked back at the mail truck which was directly behind me.

Q And who did you see drink whiskey from the bottle?

A Well, I saw --

MR. KENNEY: Objection to this line of questioning on the ground of relevance.

THE COURT: I will sustain the objection.

Q Did you see both men --

THE COURT: I sustained the objection.

MR. MARTIN: I am not permitted to inquire into that area at all?

THE COURT: I sustained the objection.

Q Did you ever tell anybody that you knew the driver and the other occupant of the mail truck to be intoxicated?

THE COURT: I sustained the objection to the line of questioning.

MR. MARTIN: I respectfully except, your Honor, for the sake of the record. I think it's highly irregular.

THE COURT: You don't have to except in the Federal Court.

MR. MARTIN: Thank you.

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Lhach 1

Turner-cross

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Q Between yesterday and today, did you have occasion to talk about your testimony that you gave on the stand yesterday?

A I don't understand what you mean.

Q You finished testifying sometime yesterday afternoon, is that correct?

A That's correct.

Q And you came back on the stand a few minutes ago here today; is that correct?

A That's correct.

Q Between the time you finished testifying yesterday and the time you took the stand a few minutes ago, did you discuss the testimony that you gave yesterday with anyone?

A No, I did not.

Q Did you discuss any phase of your testimony that was to be given today with anyone?

A No, I didn't.

(10:55 a.m. - Mr. Dizenzo entered the courtroom at this time.)

Q There was some testimony about ether and the use of ether on this so-called job.

Do you remember when you first saw the ether?

A To the best of my knowledge, I don't believe

1 I testified to that fact.

2 Q You didn't testify to ether?

3 A Not yesterday, no.

4 Q Let me ask you now: At any time during the
5 period covered by your testimony yesterday, do you now
6 remember whether ether appeared during this running
7 around?
8

9 A I'm not sure I understand the question completely.

10 MR. MARTIN: May I have it read back, if your
11 Honor please?

12 THE COURT: I think you'd better reframe it.

13 Q You know what ether is, Mr. Turner?

14 A Yes, I do.

15 Q At any time between the period of March 1,
16 1973 and April 5th of 1973, did you have occasion to
17 handle ether?

18 A I didn't.

19 Q Did you see anyone with ether during that period
20 of time?

21 A Yes, I did.

22 Q Did you see Terry Myers with ether?

23 A No, I did not.

24 Q Did you have a conversation with Terry Myers
25 about ether?

2 A Yes, I did.

3 Q Did he tell you that he had used ether on
4 other jobs?

5 A Not during that conversation.

6 Q He didn't?

7 MR. MARTIN: Your Honor, may we have it marked
8 as an exhibit?

9 (Defendant Vincent McCloskey's Exhibit K was
10 marked for identification.)

11 Q I show you this exhibit marked McCloskey's Defendant
12 Exhibit K and ask you if you recognize that paper.

13 A Yes, I do.

14 Q Was that a statement in a Question and Answer
15 form that you furnished to the postal inspectors
16 on June 20, 1973?

17 A That's correct.

18 Q On the last page, on 13, does your signature
19 appear there?

20 A Yes, it does.

21 Q Is that signature sworn to before Leo F. Shatzel?

22 A Yes, it does.

23 Q Is it witnessed by Kenneth Kievet?

24 A That's correct.

25 Q When you made those statements, were those

statements accurate?

A To the best of my knowledge, they were.

Q And you were telling the truth at the time?

A That's correct.

Q And what you said you meant?

A That's right.

Q I call your attention to Page 11, and I would like to read to you the following questions and answers:

"SHATZEL: How are they to be put in an unconscious state?

"TURNER: With the ether.

"SHATZEL: Who was to do this?

"TURNER: Terry and Geoffrey.

"SHATZEL: Was this planned ahead of time?

"TURNER: Yes, it was.

"SHATZEL: Did Terry ever indicate at the meetings that he was familiar with ether?

"TURNER: Yes, he was. He said he had used it several times in the D.C. area."

Were you asked those questions and did you make those answers?

A Yes, I did.

Q Does that now refresh your recollection?

A Yes.

Q Isn't it a fact, Mr. Turner, that your wife is a nurse?

A No, it is not.

Q Was she a nurse?

A No, she is not.

Q Was she working in a hospital?

A Yes, she does.

Q Isn't it a fact, Mr. Turner, that you agreed with Terry Mann and Geoffrey to supply them with ether?

A No, it is not.

Q Isn't it a fact that Terry Mann asked you or told you that he would need ether?

A No, that is not true.

Q Isn't it a fact that Terry Mann told you he would not require guns for the job?

A That's not true.

Q And if he did say that, you are saying he would be incorrect?

A Would you repeat that, please? I didn't hear all of it.

Q If Terry Myers said that on the stand, then you're saying he would be incorrect?

A That's correct.

Q Continuing on Page 11, down at the bottom:

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Turner-cross

2 "SHATZEL: At the time of the incident were you
3 aware that Geoffrey and Terry were armed with guns?

4 "TURNER: Yes.

5 "SHATZEL: Where did these guns come from?

6 "TURNER: I believe that they had one of their own."

7 Can you tell me which one of their own they
8 had, or which one had the gun?

9 MR. KENNEY: Objection.

10 THE COURT: You mean which one had the gun,
11 not which one of their own had the gun?

12 Q Which one of them had the gun?

13 MR. KENNEY: The objection is that Mr. Martin
14 is reading only a portion of the answer.

15 THE COURT: He left out the rest of the answer?

16 MR. KENNEY: That's correct.

17 THE COURT: Read the rest of the answer.

18 MR. MARTIN: If your Honor please, I didn't
19 want to read the rest of the answer.

20 THE COURT: Read the rest of the answer, Mr.
21 Martin.

22 MR. MARTIN: I'd like to withdraw the whole
23 question.

24 THE COURT: You may.

25 Q Do you know of your own knowledge if, in fact,

Chester Crawford had a gun?

A I have no knowledge of that.

Q But you had a gun?

A That's correct.

Q And Terry had a gun?

A Yes, that's correct.

Q And Geoffrey had a gun?

A That's correct.

Q Mr. Turner, prior to this situation, nobody ever told you that there was a postal employee involved in this incident, did they?

THE COURT: Prior to what?

MR. MARTIN: Prior to the incident that Mr. Turner testified to yesterday.

Q Did anybody tell you --

THE COURT: What do you mean by "prior to"? Prior to April 5th? Prior to March 30th? Prior to when? Give me a date.

MR. MARTIN: All right, question withdrawn.

Q Mr. Turner, before March 1, 1973, did Chester Crawford tell you that there was an inside post office man in on the job?

A I didn't know about the post office job at that time.

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Turner-cross

Q Prior to April 5, 1973, did Chester Crawford tell you that there was an inside post office man in on the job?

A No, he did not.

Q Mr. Turner, I show you this card marked Government's Exhibit 30, I believe in evidence, and ask you to look at that.

(Pause.)

Q Have you read it well?

A Do you wish me to read the whole thing?

Q No, I just want you to look at it first.

(Pause.)

Q This card is a report of a stolen motor vehicle and it lists a GMC step-van, color blue, and it lists on there that the time and date reported of the theft was 9:20 a.m. on April 2, 1973, and it has the time and date stolen as being 5:00 p.m. on March 30, 1973.

Yesterday, when you testified, you testified that there was a van being driven by a Mike in the downtown area around the Peck Street post office. Is that correct?

A That's correct.

Q So, in fact, you say there was a van before March 30, 1973; is that correct?

1 A Would you repeat that question, please?

2 MR. MARTIN: May I rephrase it?

3 Q Yesterday you testified that on Thursday,
4 March 29, 1973, you supposedly took part in an
5 operation down in the Wall Street area around the Peck
6 Street station in which Mike, somebody by the name of
7 Mike, was supposed to have driven a van.

8 THE COURT: On March 29th?

9 MR. MARTIN: That's right. Yesterday he
10 testified on Thursday, March 29th --

11 Q Are you now saying that testimony is correct?

12 A To the best of my memory it's correct.

13 Q And you are sure it was a step-van blue color?

14 A That's correct.

15 Q GMC make, right?

16 A No, I didn't say that.

17 Q You didn't say that? Did you know what make
18 it was?

19 A It was either a Chevrolet or a GMC. I don't
20 recall what -- exactly what make the truck was.

21 Q What kind of blue was it?

22 A Dark blue.

23 Q It wasn't green?

24 THE COURT: What?

lmch 10

Turner-cross

Q It wasn't green, was it?

A No. The truck was blue.

Q If Terry Myers said that the truck was green, he would be incorrect?

A According to my memory, yes.

Q If Geoffrey Mann said that the truck was gray, he would be incorrect?

A According to my memory, yes.

Q And you would be correct?

A Repeat that?

Q Your memory, according to your memory, you would be correct?

A The last question --

THE COURT: According to his memory, this is what he remembers.

Q You also remember it was Thursday?

A That's correct.

Q You mentioned a Chevrolet someplace during the course of the testimony yesterday that was being operated in and out of this area during the period from the middle of March to the beginning of April.

Can you describe that Chevrolet?

A The Chevrolet -- which one? There were two Chevrolets.

Q Describe both of them.

A One of them was a 1973 blue Chevrolet station wagon and the other was a 1972 Chevrolet two-door hardtop, maroon in color, with a white roof.

Q You are now testifying that it was a blue station wagon used?

THE COURT: What?

MR. MARTIN: I'm asking him if he is now testifying that there was a blue station wagon used.

THE COURT: When?

MR. MARTIN: During this period of time between the middle of March and the beginning of April, 1973.

MR. KENNEY: I object to the form of the question.

THE COURT: I don't know about "used." Used how? We have heard of cars driving people around, we have heard of cars being used in conjunction with the one used on the robbery.

What are you talking about?

Q Did you ever ride in a blue station wagon automobile in the vicinity of South Street and Peck Slip at any time between March 15, 1973 and April 5, 1973?

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Turner-cross

1
2 A To the best of my memory, no, I did not.

3 Q No, you did not.

4 Do you ever remember seeing that car or --
5 not that car, a '73 Chevrolet station wagon in that
6 vicinity during that period of time?

7 A Yes, I did.

8 Q On which day or days do you remember seeing
9 that car there?

10 A What specific days?

11 Q Yes.

12 A I'm trying to remember the correct dates that
13 I saw it in that area. It would be the 27th, 28th,
14 29th and 30th of March.

15 Q 27th, 28th, 29th and 30th of March?

16 A That's correct.

17 Q That would be Tuesday, Wednesday, Thursday
18 and Friday; is that correct?

19 A That's correct.

20 Q On Thursday, March 29, 1973, at what point
21 in that area did you see the blue, 1973 station wagon?

22 A At what point did I see it?

23 Q Yes.

24 A You mean what time of day?

25 Q No. The location. You testified that you

2 were down -- I am talking about the downtown area
3 in the vicinity of Peck Slip and South Street. You said
4 that you had seen it there on four days. I'm asking
5 you on the 29th of March where you saw the station
6 wagon.

7 A You mean the specific location?

8 Q Yes.

9 A On the 29th. The first time I saw the station
10 wagon on that day was at Peck Slip and South Street.

11 Q Where did you see it next that day?

12 A I saw it several times.

13 Q The next time.

14 A The next time was at the same location, about
15 a half-hour later.

16 Q Was that with a step-van?

17 A Excuse me?

18 Q I say, was that together with the step-van
19 that you described?

20 A No, it was not.

21 Q Did you ever see the two vehicles together
22 on that date?

23 A I saw both vehicles on that day, but not
24 together.

25 Q Where did you see the step-van on that day?

2 A On Maiden Lane.

3 Q So the step-van was on Maiden Lane and the
4 station wagon was on South Street and Peck Slip?

5 A That's correct.

6 Q That was on Thursday, March 29, 1973?

7 A That's correct.

8 Q On April 5, 1973, in the evening -- incidentally
9 is that the day that you disposed of the gun?

10 A No, it is not.

11 Q You disposed of that later, the gun?

12 MR.KENNEY: I believe the witness has testified
13 when he disposed of the gun.

14 THE COURT: He did not. You can ask him if
15 you want to, Mr. Martin.

16 Q When did you dispose of the gun?

17 A You mean the gun that was in my possession?

18 Q Yes.

19 A On June 20th.

20 Q Anyway, on that evening of April 5th, I
21 think you testified yesterday that you sometime went back
22 to Jersey; is that correct?

23 A On April 5th?

24 Q Yes.

25 A Yes, that's correct.

Q In the evening.

Did there also come a time when you stopped into a tavern? We are talking April 5th.

A Right.

Q In the evening.

Did you stop into a tavern?

A When I arrived back to New Jersey, yes.

Q Which tavern did you stop into?

A Wall's Tavern.

Q Did you also go to another tavern?

A From Wall's Tavern, yes.

Q You went to Iodyce's Tavern?

A That's correct.

Q When you were questioned by the postal authorities on June 20, 1973, did you tell them that you went to Wall's Tavern that evening?

A To the best of my recollection, I did.

Q Did you tell them that you went to Iodyce's Tavern that evening?

A As far as I can remember, yes.

Q Did you tell them that you went to any other tavern that evening?

A Not that I remember.

Q Did you tell them that you went to the Meadowlands

Bar that evening?

A That's Iodyce's Tavern.

Q That's Iodyce's Tavern, not Meadowlands?

A Well, the tavern was the same tavern and it was called by either the Meadowlands or Iodyce's Tavern.

Q That was the second tavern you went to? You went to Wall's Tavern first?

A Upon returning to New Jersey, that's correct.

Q What time did you get to Wall's Tavern?

A Approximately 8:45 in the evening.

Q About 8:45 in the evening? Did you have occasion on that evening to call Chester Crawford?

A No, I did not.

Q If I told you that Terry Myers said that you called Chester Crawford, would he be incorrect?

A To the best of my recollection, he would be.

Q Did there come a time when you met Chester Crawford in Wall's Tavern?

A Yes, there was.

Q How long after you arrived do you say that you saw Chester Crawford in Wall's Tavern?

A It was approximately an hour later.

Q Did he arrive there with Geoffrey and Terry?

A No. I believe that he came alone.

Q Let me refer you to Page 8 of that statement,
up at the top.

Will you read the first few sentences, please?

A You mean continued from the previous page?

Q Starting with the first sentence, about halfway
through the first line, and then read down for the next
couple of lines, to yourself, if you will, please.

(Pause.)

Q Have you read it, Mr. Turner?

A Yes, I have.

Q Does that refresh your recollection as to the
sequence of events when you arrived at Wall's Tavern?

A Yes, it has.

Q I ask you now, isn't it a fact that you met
Chester Crawford, Terry Myers and Geoffrey Mann --

MR. MARTIN: Question withdrawn.

A Isn't it a fact that after you arrived at the
tavern, Chester Crawford, Terry Myers and Geoffrey Mann
came in together and met you?

A They all came to the tavern, but I'm not really
positive that they all came together.

Q Didn't you tell the post office people, and I will
read this sentence, "About a half-hour later Chester
Crawford, Geoffrey and Terry arrived at Wall's Tavern,

at which time they began to explain to us why they started to shoot."

Did you tell the postal inspectors that?

A Yes, I did.

Q Did you swear to that statement?

A To the best of my recollection, yes, I did.

Q At that time that was to the best of your recollection?

A That's correct.

Q And this was on June 20, 1973?

A That's correct.

Q Under that, you swore to it? When you went to the Meadowlands later, who went to the Meadowlands Bar with you?

A Who went to the Meadowlands Bar?

Q Yes.

A You mean from Wall's Tavern?

Q From Wall's.

A It was myself, Tommy Carroll, Billy McCloskey, Terry Myers and Geoffrey Mann.

Q Where did Chester Crawford stay?

A Chester Crawford did eventually come around to Wall's Tavern, but not at the same time we did.

Q Excuse me?

1 A Chester Crawford remained at Wall's Tavern and
2 came to --

3 Q I see.

4 In other words, when you left Wall's Tavern,
5 Chester Crawford remained in Wall's Tavern?
6

7 A Right. He joined us shortly thereafter.

8 Q He came later?

9 A Right.

10 Q Tell me about Harry Johnson, where was he?

11 A I have no knowledge.

12 Q You have no knowledge?

13 A No.

14 Q Did you see Harry Johnson that night?

15 A Later on that evening, yes, I did.

16 Q Later on, where?

17 A Outside of Iodyce's Tavern.

18 Q When?

19 A Approximately 10:30 in the evening.

20 Q Who was with him?

21 A He was sitting alone in a car parked outside
22 of Iodyce's.

23 Q Do you know whose car it was?

24 A No, I don't.

25 Q Were you eating in Meadowlands Tavern?

1 A I was not.

2 Q Were you drinking in Meadowlands Tavern?

3 A Yes, I was.

4 Q Mr. Turner, during yesterday's story that you
5 were telling us, during this period of time --

6 MR. KENNEY: I object to the use of the word,
7 "story."

8 THE COURT: Sustained.

9 Q During your testimony yesterday, it's my recol-
10 lection of what you said that on many, many days you would
11 come in to Wall's Tavern, you would sit at the bar at 11:30
12 and you would meet some people in the bar, and this
13 happened very frequently; isn't that correct?

14 A That's correct.

15 Q And that would be almost every morning during
16 that period of time, you testified, from about March 19th
17 through April 5th; is that correct?

18 A That's correct.

19 Q And you spent much time in this bar, in fact
20 hours at a time; isn't that correct?

21 A That's correct.

22 Q While you were spending this time in the bar,
23 you were seated at the bar?

24 A At times.

Q And when you were seated at the bar, were you drinking?

A At times.

Q And what were you drinking?

A Anything from coffee to scotch.

Q Would you say more coffee than scotch?

A Yes, I would.

Q Then you would get down to Katz' delicatessen and then you would wind up back in Wall's Tavern on many of those evenings; wasn't that your testimony?

A That's correct.

Q When you went back into the bar, did you drink then?

A No. To the best of my knowledge, I did not.

Q Isn't it a fact, Mr. Turner, that during this period of time you were drinking a quart of whiskey a day?

A I don't drink whiskey.

Q Didn't you just tell me you were drinking scotch?

THE COURT: People distinguish between rye and scotch, and many people call rye "whiskey" and scotch "scotch."

MR. MARTIN: I'm sorry. To me it's all the same.

Q What do you drink, Mr. Turner?

A What do I drink?

Q Yes.

A Scotch or beer.

Q That was during this period of March 18th through April 5th, you were drinking scotch and beer?

A No, either one of the two; not both.

Q Isn't it true that during this period of time you drank a bottle of scotch a day?

A No, that is not true.

Q Isn't it a fact that you are an alcoholic?

A That is not true.

Q Mr. Turner, have you had any medicine before coming here to testify today?

A No, I have not.

Carroll

12/20

Q Are you on any pills or tranquilizers?

A No, I am not.

Q You are under no medication?

A No, I am not.

Q When did you have the last drink?

A Before I was arrested.

Q And you haven't had a drink since you were arrested?

MR. KENNEY: May we have a date on that?

THE COURT: June 20th.

Q You haven't had a drink since you were arrested?

A No, I have not.

Q And your memory on these many, many events that you testified to during this period of March 18th and April 5th of 1973 was not affected by any drinks you had during this period of time, was it?

A I wouldn't say it was.

Q You could sit in a bar and you could drink Scotch or beer and that didn't affect your memory at all, did it?

A I never drank enough so it would affect my memory.

Q What do you consider enough?

A Well, I never had more than three or four drinks during the course of a day.

Q Incidentally, you spent some time in the company of Chester Crawford, did you not?

A On what occasion?

Q Well, I believe during this period of time, say, from March 18th until April 5th, 1973, didn't you tell us yesterday you had occasion to spend some time with Chester Crawford?

A With everyone else, yes.

Q Did you know that Chester Crawford drank Chivas Regal?

A No, I did not.

MR. KENNEY: Objection, your Honor; based on facts not in evidence.

THE COURT: Sustained.

Q Did you ever see Chester Crawford have a drink?

A No, I did not.

Q He was in taverns with you?

A That is correct.

Q When he was in taverns, did you ever see him order anything?

A Soda.

Q Soda. Do you know what kind of soda?

A No.

THE COURT: I really don't think it makes much

difference, and the Chivas Regal is stricken because the jury should be informed there is nothing in this case which would ever indicate that Mr. Crawford drank Chivas Regal, and the court knows of nothing upon which counsel could base that statement.

MR. MARTIN: I am asking if he knew it, your Honor.

THE COURT: I'm sorry. That is not proper cross-examination, Mr. Martin.

Q Now, you testified, I believe yesterday, at one point that you came to a stop sign at the hospital during one of these days. Did you mean that there was a stop sign next to the hospital?

A What do you mean, next to the hospital?

Q Let me show you. There is testimony, or my recollection of the testimony is that there came a time when the mail truck came here (indicating).

THE COURT: Pointing to Beekman Street between Gold and William.

Q At the point where William -- at the point where Beekman Street hits William, is there a stop sign there?

A To the best of my memory, yes, there is.

Q Well, when you say to the best of your memory, are you telling us that you remember there is or there

1
2 isn't?

3 A I remember there is.

4 MR. MARTIN: May I just have a moment, your
5 Honor?

6 THE COURT: When were these pictures taken?

7 MR. MARTIN: The other day. These are the ones
8 that are in evidence.

9 THE COURT: When were they taken?

10 MR. MARTIN: They were taken, I think, last week.
11 I'm going to inquire as to his recollection, if your Honor
12 pleases.

13 Q I show you this picture marked Defendant's
14 Exhibit E5 for identification and this picture marked
15 Defendant's E4 for identification, and ask that you look at
16 the exhibits.

17 Have you looked at them?

18 A YES, I have.

19 Q And do you recognize that vicinity from looking
20 at those pictures?

21 A No, I do not.

22 Q You do not. Were you ever there?

23 MR. KENNEY: Objection.

24 THE COURT: Sustained.

25 MR. MARTIN: Your Honor, I am not permitted to

ask if he was ever there?

THE COURT: He said he doesn't remember the pictures, so how can you ask him was he ever there?

Q Let me show you these pictures marked Defendant's Exhibit E7, Defendant's Exhibit E5, Defendant's Exhibit E3, Defendant's Exhibit E2, Defendant's Exhibit E1, and Defendant's Exhibit E in evidence, and ask you to look at those.

THE COURT: We will have a short recess.

(Jury left the courtroom.)

THE COURT: You may step down. Give the pictures back to the clerk.

(Witness left the courtroom.)

(Recess.)

(Jury present.)

THE COURT: You may continue, Mr. Martin.

MR. MARTIN: Thank you.

Q Mr. Turner, did you look at those exhibits?

A Yes, I did. Let me look at them again.

Q Do you recognize any of those exhibits as being any of the places that you testified to yesterday during the period March 18, 1973 through April 5, 1973?

A Would you repeat the first part of that question, please?

2 MR. MARTIN: May I have it read back, if your
3 Honor please?

4 THE COURT: Read it back, John.

5 (Question read.)

6 A None of them look familiar.

7 Q None of them look familiar to you?

8 A No.

9 Q I show you these three documents --

10 MR. MARTIN: May I have these marked as
11 exhibits, please?

12 (Defendant McCloskey's exhibits L, M and N
13 marked for identification.)

14 Q I ask you to look at these, please.

15 (Pause.)

16 THE COURT: Put your question.

17 Q Do you remember testifying that after this
18 incident happened on April 5th, that you came up to the
19 corner -- from the intersection of Beekman and William Street,
20 that you came up to the corner of Nassau Street, going on
21 Beekman Street in a westerly direction; do you remember that?

22 A That's correct.

23 Q And do you remember marking an A at the corner?

24 A Well, I didn't mark the A.

25 THE COURT: That is not his A.

1 MR. MARTIN: I'm sorry.

2 Q Did there come a time when you did traverse this
3 area, that is, from the intersection of William and Beekman
4 Street, in a westerly direction, to the intersection of
5 Beekman and Nassau Street?
6

7 A YES. I was in the van when we left Beekman
8 Street.

9 Q And did you then testify that you made a right
10 hand turn and you went along Nassau Street to Spruce Street
11 in a northerly direction?

12 A No -- it's at that point that I got out of the
13 van and I walked up Nassau Street, that's correct.

14 Q I show you those exhibits.

15 Do you recognize one of those exhibits as being
16 the street facing north between Beekman and Spruce on
17 Nassau?

18 A No, they do not look familiar to me.

19 Q Let me show you this and see if that refreshes
20 your recollection, indicating Defendant McCloskey's Exhibit
21 L for identification.

22 A It doesn't look familiar to me.

23 Q It doesn't look familiar to you.

24 I show you this, Defendant McCloskey's Exhibit
25 N for identification, and ask you if that looks familiar to

1 you?

2
3 MR. KENNEY: I object to this, your Honor. He
4 has looked at the three.

5 THE COURT: He has gone through it once.
6 You don't have to go through it a second time.

7 Q Did you then testify that you took a bus at
8 that point, somewhere along that point; was that your testimony

9 Yes, I took a bus at the intersection there of
10 Park Row and Nassau Street.

11 Q In other words, you took a bus at Park Row?

12 THE COURT: No, he didn't take it there.

13 Q Will you tell us where you took the bus, please?

14 THE COURT: Go down and show him.

15 (Witness at chart.)

16 A It was at this point here where I got on the
17 bus (indicating).

18 Q This point. Could you mark an X or some kind of
19 a mark?

20 THE COURT: Put an L down. Let's get a new
21 letter.

22 A Right here (marking).

23 Q Was that the bus stop in here?

24 A The bus pulled into this curb, that's correct.

25 MR. KENNEY: May the record reflect, your Honor,

that mark is on the south --

THE COURT: Park Row corner.

MR. KENNEY: Southeast.

THE COURT: Southeast corner of Spruce and Park Row.

MR. KENNEY: Thank you.

(Witness resumes stand.)

Q When you got on that bus, did the bus stop in the intersection or before the building line?

A What do you mean, in the intersection or before the building line? I'm not sure what you mean.

Q Was the front of the bus where it stopped at this point before the building line of the street or was it out in the intersection?

THE COURT: You mean blocking the intersection?

MR. MARTIN: Yes.

A The bus was pulled up to the curb.

Q To the curb indicated here?

A That is correct.

Q Would it be fair to say the front of the bus was here where you put the L?

A Yes, that would be approximately right.

Q And when you got onto the bus did you go toward the back of the bus?

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1 A No, I sat in the middle of the bus.

2 Q The middle. But you did go past the driver and
3 around the middle to where the door comes out?

4 A It was before the back door.

5 Q And what side of the bus did you sit on?

6 A It was the -- well, sitting in the bus, I was
7 on the right side of the bus.

8 Q While you were in the bus, did you see Terry
9 Myers and Geoffrey Mann?

10 A No, I did not see both of them.

11 MR. MARTIN: May I have a moment, your Honor?

12 THE COURT: Yes.

13 (Pause.)

14 Q I call your attention to page 7 of Defendant
15 McCloskey's Exhibit K in evidence and ask you to read that.

16 (Pause.)

17 MR. KENNEY: Does Mr. Martin want the witness to
18 read the entire page?

19 MR. MARTIN: I'm not reading it. I'm asking the
20 witness to read it to refresh his recollection.

21 THE COURT: The whole page is the question.

22 MR. MARTIN: No, just the middle line.

23 MR. KENNEY: Could we know what line?

24 MR. MARTIN: Do I have the indulgence of the
25

1 Court to just let him read his whole statement so he won't
2 be confused?

3
4 THE COURT: His whole statement?

5 MR. MARTIN: His whole statement, just that
6 particular portion on that page.

7 THE COURT: Why don't you come up and point to
8 the portion of the statement you are interested in having
9 him read now?

10 (Pause.)

11 A You want me to read that aloud?

12 Q No, read it to yourself.

13 THE COURT: Read it to yourself.

14 MR. KENNEY: Might I ask Mr. Martin to point
15 out, your Honor, what section?

16 MR. MARTIN: Doyou want me to show you where it
17 is?

18 MR. KENNEY: Please.

19 (Pause.)

20 Q In your statement to the postal authorities on
21 June 20, 1973, did you tell them that you were on a bus and
22 you saw Terry Myers running?

23 A That's correct.

24 Q And that you saw Terry Myers get into a van?

25 A That's correct.

jkd13.

Turner-cross

1 jkd13. Turner-cross 1511
2 Q Did you also tell them that you saw Geoffrey
3 Mann running about a block away?

4 A That's correct.

5 Q And you saw them both at the same time?

6 A No, I didn't see them both at the same time.

7 Q You saw them while you were on the bus, though?

8 A That's correct.

9 Q And can you tell us, from the bus, exactly where
10 was your window on the bus when you saw them?

11 A The bus was approximately even with the building
12 line, at the end of the building.

13 Q That would be the building line of Spruce Street--
14 would that be here (indicating)?

15 A That's correct. But the building doesn't end
16 there.

17 Q I see. Isn't it a fact yesterday you told us
18 that they went down Frankfort Street and you drew a green
19 line under Frankfort?

20 MR. KENNEY: Objection. The jurors recollection
21 will control, but the line is where the van went.

22 THE COURT: Where he said the van went.

23 MR. KENNEY: In fact, I believe he placed that
24 Y in there, did he not, where Terry got into --

25 THE COURT: Up to the van.

MR. MARTIN: All right, question withdrawn. X

Q Will you tell us again, Mr. Turner, now, what you saw from the bus and where you saw it?

A Where I saw it?

Q Yes. You were on the bus.

A Right.

Q You saw people on a van. Tell us what you saw.

A I was sitting on the bus. I saw -- the van was stopped up further from the intersection of Spruce and Nassau Street.

Q Are you saying that the van stopped here?

A That's correct.

Q In other words, north of the intersection of Spruce and Nassau, that is what you are telling us?

A That's right.

Q Then what else did you see?

A I saw, as I sat down in the seat, I looked towards the van, I saw Terry Myers getting into the van. He was running. He was running a few steps and got into the back of the van.

Q And where do you say he got into the van; would that be up in this vicinity also (indicating)?

A Right.

THE COURT: Where he marked it.

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Turner-cross

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Q Where did you see Geoffrey Mann?

A Geoffrey was running up Nassau Street.

Q At what point would you say he was at Nassau Street? I presume between Beekman and Spruce?

A No, it was up further, right there on the intersection.

Q Right here?

A That's correct. That's when I first saw Geoffrey.

Q Was he a block away from Terry?

A Well, it's approximately a block from where the van was to where Geoffrey was.

Q Isn't it a fact, Mr. Turner, that you did not see that van go down Frankfurt Street?

A No, that's not a fact.

Q Isn't it a fact that you did not see Terry Myers get into a van at that area you described north of Spruce Street?

A No, it is not a fact.

Q Isn't it a fact that you did not see both locations from the bus at the same time?

A That is not a fact.

THE COURT: Both what locations?

MR. MARTIN: The location where he said he saw Terry get into the van and he said he saw Geoffrey running.

Q Isn't it a fact --

THE COURT: You mean that he couldn't see both?

MR. MARTIN: That's right, from the bus.

THE COURT: He answered, "No."

MR. KENNEY: Could we have the second identified for the record?

THE COURT: He has him on the intersection of Spruce and Nassau.

Q Isn't it a fact that when you were questioned by the postal inspectors on June 20th, in your sworn statement you said that you saw Geoffrey running down the middle of the street about a block away?

A That's correct.

Q The middle of the street, about a block away, was that your testimony?

A That's my testimony.

Q If Terry Myers said he ran down Spruce Street to this point and got into a van, would you say that Terry Myers was incorrect?

A From what I remember, yes.

Q If Geoffrey Mann said that he came down this way and got into a van --

THE COURT: Indicating, for the record, what street?

MR. MARTIN: Indicating coming east on Spruce Street from Nassau Street, approximately almost a half the way down the street.

Q Would you say that was incorrect?

A Yes, I would.

Q And your version is accurate?

A To the best of my memory it is.

Q Are you sure?

A Yes.

Q You knew Mr. Giorgio in Jersey?

A That's correct.

Q You had worked there --

A Worked where?

Q You had worked in the same company with Mr.

Giorgio?

A That's correct.

Q You were fired in February of 1973?

A No, that is not correct.

Q When did you leave there?

A In February of 1973.

Q You were familiar with Mr. Giorgio cashing checks?

A That's correct.

Q You got ahold of Chester Crawford and Terry Myers and Geoffrey Mann and you said, "I got a payroll that I know

about what you guys can knock off," did you tell them that?

A No, I did not.

Q What did you tell Chester Crawford?

A I didn't tell Chester Crawford in reference to --

Q What did you tell Terry Mann?

A I didn't tell him anything in reference --

Q What did you tell Geoffrey?

A I didn't tell Geoffrey anything in reference to that robbery.

Q Did you tell him what Giorgio looked like?

A I'm not sure if I did tell him that.

Q Did Terry ask you what he looked like?

A No, he was not interested, as long as I was going to be there.

Q Excuse me?

A He was not interested as long as I was going to be there.

Q When you were there, you said to Geoffrey and to Terry and to Chester, "That's Giorgio," didn't you?

A You mean at the time of the actual robbery occurred?

Q Did an actual robbery occur?

A Yes, it did.

Q You were there?

1
2 A I was there.

3 Q And at that time did you tell Chester, Terry
4 and Geoffrey, "That's Giorgio. He's the guy with the
5 money"?

6 A Yes, I did.

7 Q So you had a conversation --

8 THE COURT: Pardon me, Mr. Martin. When you
9 started this line of question, I think the witness
10 and certainly my attention was brought to the night before
11 when they discussed it. I thought that's what you were
12 referring to, not the very moment of the grabbing of
13 DiGiorgio.

14 Q You testified yesterday, as I recollect, that on
15 April 5, 1973, you met with some other people and with
16 Terry Myers in Katz' delicatessen. Is that accurate?

17 A That's accurate.

18 Q Excuse me?

19 A That's accurate.

20 Q And what time did you meet on April 5th in Katz'
21 delicatessen with Terry Myers?

22 A It was approximately 4:00 p.m.

23 Q Did he come in alone or did he come in with
24 other people?

25 A He came in with other people.

Q Whom did he come in with?

A Chester Crawford, Geoffrey and Harry.

Q Harry, meaning Harry Johnson?

A That's correct.

Q Just between you and Terry, did he specifically say anything to you or did you specifically say anything to him at that time in Katz' delicatessen on April 5, 1973?

MR. KENNEY: Objection to the limiting of the conversation.

THE COURT: Overruled.

Did you?

A Would you repeat the question again, please?

(Record read.)

A We had a general conversation.

Q Isn't it a fact, Mr. Turner, that Terry Myers was not in Katz' delicatessen with you on April 5, 1973 at 4:00 o'clock or at any other time of that day?

A No, that's not true.

Q It isn't true? If I told you that Geoffrey said he was in an apartment on Houston Street and that Chester Crawford said that he was in an apartment house on Houston Street, would you say that they were incorrect?

A That's right, I would.

Q And your testimony is accurate?

2 A Yes, I would.

3 Q Incidentally, did you know that Terry had a girl
4 friend on Houston Street?

5 A I had no knowledge of that.

6 Q There came a time, you were telling us, that you
7 were riding to Pennsylvania. Do you remember that incident?

8 A Yes, I do.

9 Q I think you testified that this happened on
10 Friday, toward the evening of Friday, March 30, 1973.

11 Do you remember that testimony?

12 A Yes, I do.

13 Q And then there was a safari that went on through
14 until Saturday, sometime Saturday? Do you remember that?

15 A Yes, I do.

16 Q Didn't you tell Terry Myers, Geoffrey Mann and
17 Chester Crawford and Harry Johnson that you wanted to
18 take them to have a cigarette hijack --

19 MR. MARTIN: Question withdrawn.

20 Q -- that you wanted to take them with you so that
21 you and they could hijack a truckload of cigarettes?

22 A No, I didn't.

23 Q Incidentally, did you participate in any other
24 robberies or attempted robberies with Geoffrey Mann and
25 Terry Myers?

1 A Only those that I have mentioned.

2 Q Only those you mentioned?

3 A That have been mentioned here.

4 Q Did you participate in any robberies with anyone
5 else other than --

6 MR. KENNEY: Objection.

7 THE COURT: Sustained.

8 MR. MARTIN: I'm not allowed to go into that,
9 your Honor?

10 THE COURT: No.

11 Q Did you testify yesterday, as I recollect your
12 testimony, that on April 2, 1973, you had a conversation
13 with Chester Crawford in Katz' delicatessen? Do you
14 remember that?

15 A April 2nd? Yes, I believe I did.

16 Q Do you remember saying, or Chester saying to you
17 that he couldn't get in touch with Terry Myers and Geoffrey
18 Mann?

19 A Well, he wasn't speaking directly to me when he
20 said that.

21 Q But did you hear him say that?

22 A Yes, I did.

23 Q Did he, in fact, say that?

24 A To the best of my recollection, he did, yes.

Q Did you then go down to this Peck Slip area without Terry and without Geoffrey and with Chester Crawford in an attempt to take the mail truck?

A On the 2nd?

Q No, on the 3rd.

A On the 3rd? No, I don't believe we did.

Q There was some testimony you gave us about Chester -- you talking to Chester Crawford, I believe, and you wanted him to take either Terry or Geoffrey's place.

Do you remember that testimony you gave yesterday?

A Would you repeat that question, please?

(Record read.)

MR. KENNEY: There is no basis on the record for that question, your Honor. I think the event he is referring to is Mr. Turner's testimony as to April 4th and it was Mr. Carroll who was going to take --

MR. MARTIN: If your Honor please, I object to the comments --

THE COURT: I'm sorry, I don't have April 3rd, but I will let the question stand.

A There was testimony I gave yesterday, but not conversation between Chester and myself.

Q Did you ever hear Chester say that he was going to take Terry's place or Geoffrey's place?

A That he was going to take his place?

Q Yes.

A No, I did not.

Q Did you ever ask Chester to take Terry's place or Geoffrey's place?

A No, I did not.

Q You don't remember any conversation about Chester Crawford taking one of the other party's places?

A Yes, Mr. Carroll asked him to take Terry Myers' place.

MR. MARTIN: I move the answer be stricken.

THE COURT: Overruled.

MR. MARTIN: I asked him if he remembered whether or not he had heard the conversation. He injected outside matter. I ask the Court to strike it from the record.

THE COURT: I will not.

MR. MARTIN: I ask the Court to direct the witness to be responsive to the answer.

THE COURT: I think that was responsive to your question.

Q When was Chester Crawford supposed to take Terry Myers' place?

THE COURT: You mean what date?

Q What date.

MR. MARTIN: Question withdrawn.

Q What date was Chester Crawford supposed to take Terry Myers' place?

A Well, there was no date that he was supposed to. He was requested by Mr. Carroll to take his place --

MR. MARTIN: If your Honor please, I ask that the witness be responsive to the question. I asked him specifically what date, and I ask that the Court admonish the witness.

THE COURT: What date?

THE WITNESS: To the best of my memory, I think it was on April 4th.

Q On April 4th? Did he have a gun, Chester?

A I don't know.

Q Was that the day you volunteered to watch the truck?

A No, it is not.

Q Not the same day you said --

A I didn't volunteer to watch the truck.

Q You didn't testify yesterday that you volunteered to watch the truck on April 4, 1973?

A Wait a minute.

(Pause.)

Q Do you remember whether you did or not, sir?

1 A To the best of my memory, I did not.

2 Q You did not say that yesterday, to the best of
3 your memory?

4 A That's true.

5 Q Mr. Turner, there came a time where you said
6 that the first time you went downtown to that area you
7 saw a Hertz truck; is that correct?

8 A The first time I saw the truck that was eventually
9 involved, yes.

10 Q And it was a Hertz truck?

11 A Yes.

12 Q Not a mail truck?

13 A It was a Hertz truck with a U.S. mail sticker
14 on the side of it.

15 Q A mail sticker? Will you describe that, please?

16 A Well, it was a white sign with black letters
17 that said, "U.S. Mail," on it. It was pasted on the side
18 of the truck.

19 Q But it wasn't a silver, blue or regular mail
20 truck of the United States Post Office, was it?

21 A No.

22 Q It was a Hertz Rent-A truck, wasn't it?

23 A That's correct.

24 Q And that's what you intended to knock off, wasn't
25

1
2 it?

3 THE COURT: Are you drawing a distinction between
4 a truck rented by the United States Mail for carrying
5 the mail from Hertz?

6 MR. MARTIN: Your Honor, I am not trying to
7 distinguish anything. I am trying to ascertain facts
8 from the witness. That's all I'm trying to do.

9 THE COURT: I'm sorry. You're going beyond
10 that. You are also trying to draw a distinction in the
11 jury's mind. You are certainly drawing it in my mind, and
12 I will tell the jury it makes no difference whether the
13 mail truck is owned the United States Government or whether
14 they rent it from Hertz for the use of transporting the
15 mail.

16 Now, you may proceed, Mr. Martin.

17 MR. MARTIN: If your HONOR pleases --

18 THE COURT: You may proceed, Mr. Martin.

19 MR. MARTIN: May I approach the bench?

20 THE COURT: You may proceed, Mr. Martin.

21 MR. MARTIN: I can't approach the bench?

22 THE COURT: No.
23
24
25

T5

Q Can you describe this truck that you saw the first time when you followed it on its route?

A It was yellow in color and it had Hertz on it and it had a U.S. mail sticker on the doors and on the side of the truck.

Q Did you have occasion to notice the occupants of the truck that day?

A No, I don't believe I saw them.

Q You don't know whether there was a uniform on those occupants or not?

A No, I do not.

Q And when was this day -- question withdrawn.

MR. DIRENZO: May we approach the bench?

(At the bench.)

MR. DIRENZO: Do you mind excusing the witness, your Honor?

(Witness leaves the courtroom.)

MR. DIRENZO: At the point where Mr. Martin was attempting to elicit information concerning the fact that this was allegedly a Hertz rental truck and your Honor made the comments that you did, that it made no difference if it had U.S. Mail on it --

THE COURT: I went beyond that. I said it made no difference whether the truck was owned by the United

States or whether they rented it for the purpose of carrying U.S. Mail.

MR. DIRENZO: I don't quarrel with that. I think we should be afforded the opportunity to go into the issues to whether this fellow recognized it and treated the contents on that truck as a Hertz rental truck without regard to the fact that there may have been mail on it, because if he is under the impression that this is a truck that is a conveyor or carrier of merchandise other than United States Mail, to that extent there is a certain area where I think they have to impute knowledge to the fact that he knew it, in fact, to be government property.

THE COURT: You are not talking about the Fifth?

MR. DIRENZO: No, sir, I am not talking about the Fifth. As I understand Mr. Martin's cross, he was attempting to show originally that all Turner learned was that there was going to be a job in New York, that he didn't know it was a mailtruck job, he says, until some time later, this some time later apparently being the day he went down and saw the truck, which was a Hertz truck, not the regular recognized U.S. mailtruck. The fact that it had a mail sign on it, a postal truck sign, didn't necessarily mean that he recognized it as being a conveyor of United States mail.

1 THE COURT: He has testified he saw the signs
2 on that. Do you want to ask him, "Do you think there
3 was mail on it or not?" Is that what you want to ask
4 him?
5

6 MR. DIRENZO: I didn't ask the question, but I
7 think that is what Mr. Martin may be trying to develop
8 from the question.
9

10 THE COURT: That is not the way he put the
11 question. Now, you know Massiello has made a barrel of
12 money as far as renting trucks is concerned.
13

14 MR. DIRENZO: As far as Gentleman Jim is con-
15 cerned --
16

17 THE COURT: You know that most of the trucks in
18 New York are rented, don't you?
19

20 MR. DIRENZO: This is what I am attempting to
21 establish. I can rent a truck; it may have U.S. Mail on
22 it; I could be transporting merchandise other than
23 U.S. Mail, but I don't rip that sign down everytime I
24 transport other merchandise merely because I am not carrying
25 mail at that particular point.

THE COURT: Why don't we reserve this point to
you, Mr. Drenzo.

MR. DIRENZO: I want to leave it to more com-
petent hands.

THE COURT: Counsel can go into that later.

Bring the witness back.

(In open court.)

DEFENDANT CARROLL: He was coaching the witness while he was watching here.

THE COURT: Go in and see what is going on in there.

(Mr. Kenney leaves the courtroom and returns.)

MR. KENNEY: I have spoken to Deputy Inspector Kievit. Mr. Kievit spoke to Mr. Carroll, he greeted him.

THE COURT: Mr. Carroll, there is a difference between greeting him in the doorway and coaching a witness. Now, you saw him greet him in the doorway. The people who were present said there was no coaching of the witness.

You may proceed, Mr. Martin.

MR. MARTIN: Thank you, your Honor.

BY MR. MARTIN:

Q Did you know any man by the name of Tony, who hangs around Wall's Tavern?

A Tony? The name is not familiar.

Q Do you know anybody by the name of Frank?

A Yes, I do.

Q Who hangs around Wall's Tavern?

2 A Yes, I do.

3 Q Do you know his last name?

4 A Well, there were a couple of Franks. Which one
5 do you mean?

6 Q Well, when you answered my question you evidently
7 meant one. The one that you meant, can you tell me
8 his last name?

9 A You asked me if I knew a Frank?

10 Q That is right.

11 A There was a Frank, but no one specific.

12 Q So that I can understand it, do you know more
13 than one Frank?

14 A Yes, I do.

15 Q Who hangs around Wall's Tavern?

16 A Yes.

17 Q Do you know a Mr. Dixon?

18 A No, I do not.

19 Q Do you a Mr. Norton?

20 A No, I do not.

21 Q Do you know a Mr. Leon Rogers?

22 A No, I do not.

23 Q Do you know a Mr. Marciano?

24 A Would you repeat that last name, please?

25 Q Mr. Marciano.

mp6

Turner-cross

1 A Are you talking in reference to Wall's Tavern?

2 Q Yes.

3 A Yes, I do.

4 Q Do you know a Mr. Miller?

5 A Yes, I do.

6 Q Did Chester Crawford ever tell you that in
7 October and November of 1972 he was down casing a post office
8 operation with Dixon, Norton and Rogers?

9 A No, he never told me that.

10 Q Do you know that Dixon, Norton and Rogers were
11 named as co-conspirators in this case?

12 MR. KENNEY: Objection, your Honor.

13 THE COURT: Sustained.

14 Q There was some conversation yesterday where you
15 used the phrase in your testimony "square the business;
16 today is the day it is going to happen," and you said Terry
17 said that phrase. Do you remember giving that testi-
18 mony?
19

20 A Yes, I do.

21 Q How many times did Terry use that phrase?

22 A It was a common expression he used.

23 Q A common expression, "We are going to square the
24 business; today is the day it is going to happen," that
25 was a common expression of Terry?

mp7

Turner-cross

1
2 A That is not what I testified to.

3 Q You didn't say that yesterday?

4 A What I said was, Terry said, "Square business,"
5 not "Square the business."

6 Q He said square business what?

7 A "Today is the day; we are going to do it today."

8 Q How many times did he say that?

9 A That particular statement I remember him saying
10 once.

11 Q Didn't you testify yesterday that he said it
12 twice?

13 A I guess I did.

14 Q Now, can you tell me the days, both days on which
15 he said it?

16 A Well, the one day I remember he said it was
17 April 5th, and the other time that I remember him saying it,
18 using that term, was, I believe, March 30.

19 Q Did you ever go to a diner in New Jersey and
20 meet with Chester Crawford in a vestibule between the
21 entrance door to the diner and another inner entrance door
22 to the area where you would sit and eat?

23 A Not that I remember.

24 Q Let me take you back to March, 1921.

25 THE COURT: That's a long way back, Mr. Martin.

MR. MARTIN: It is, your Honor. Question withdrawn and I apologize.

Q Let me take you back to March 21, 1973. Did you ever meet with Chester Crawford in a diner?

A March 21?

Q Yes.

A Not that I remember.

Q How about the day before you fingered Mr. Di Giorgio on the payroll robbery? Do you remember meeting him that evening, the evening before you fingered Di Giorgio in the payroll robbery?

A I met him, but not in the diner.

Q And if I told you that Geoffrey Mann said that Crawford met an individual at a diner, in a vestibule of a diner, does that refresh your recollection at all?

A No, it wouldn't.

Q It is your testimony that you didn't meet with Chester Crawford?

A In a diner?

Q Did you testify that when you first met Terry, Terry came in to some place -- I believe it was Walls -- where you were, the first time you ever met Terry?

MR. KENNEY: I am going to object. There is no basis for that.

THE COURT: I will let it stand.

THE WITNESS: Repeat the question, please.

Q Do you remember the first time you met Terry?

A Yes.

Q What day was that?

A That was on the 21st of March.

Q Do you remember testifying that he came into a diner to meet with you -- into Wall's to meet with you?

A No, I believe it was Iodyce's I testified to.

Q Iodyce's?

A He didn't come in. I met him on the outside.

Q You met him on the outside? And you did not testify yesterday that Terry came inside and asked you if you could bring Geoffrey into the saloon with him?

A Not on March 21.

Q You didn't testify to that yesterday?

A No, I did not.

Q Was March 21 the first day you met Terry?

A That is the first time I saw him, yes.

Q He did not say, "Can I bring Geoffrey in"?

A No, he did not.

Q And you didn't testify to that yesterday?

A No, I did not.

Q Mr. Turner, do you remember on June 22, 1973,

appearing before a grand jury in this building?

A June 22? Is that the date you said?

Q June 22, 1973, at about 4.00 p.m.?

A I believe the date is correct.

Q Do you remember being asked this question by Mr. Kenney on page 3, towards the bottom of the page:

"Q Mr. Turner, would you look at Grand Jury Exhibit 1, please?"

And were you then shown that?

A This is a copy of my statement.

Q Were you shown this document?

A Repeat the question again, please.

Q I say, were you then shown that document that you are now holding in your hand?

A Would you repeat the first part of that question?

Q "Q Mr. Turner, would you look at Grand Jury Exhibit 1, please."

Did you look at the exhibit?

A Yes, I did.

Q Is that the exhibit the paper that you are holding in your hand?

A The exhibit that was shown to me at that time, this is it; if not the original copy, it is a copy of it.

Q Are you now able to say whether or not that

mp11

Turner-cross

is the document?

A This specific document appears to me to be the original, but I couldn't swear this was the original. But it was a copy of it.

Q Did you at any other time sign any documents for either the postal inspectors for the government, the United States Attorney's office?

A Did I sign any other documents?

Q Yes.

A I believe I did not.

Q Then there was another question.

"Now, is that your statement?"

And your answer is, "Yes, it is."

Now, is the document that you are holding in your hand either the original or copy of the statement that you were testifying before the grand jury?

A Yes, it is.

Q "Q And did you give that statement to Inspector Chassel and Inspector Cavelo on June 20 of this year?

"A Yes, I did."

Is that correct?

A That is correct.

Q "Q Have you recently read that statement in my office this afternoon?

1
2 "A Yes, I have.

3 "Q Is that in substance your statement today?

4 "A Yes, it is.

5 "Q Is there any part of that statement which you
6 would like to change?

7 "A No."

8 Do you remember those questions and those
9 answers?

10 A Yes, I do.

11 Q Now, in the statement, a copy of which you have
12 in your hand, dated June 20, 1973, did you say anything
13 in this statement about a robbery in New Jersey?

14 A I don't believe it is in this statement.

15 Q Did you tell anybody, either the postal
16 inspectors or the police or the United States Attorney's
17 office about this robbery in New Jersey at that time?

18 A I am not positive if I did or not.

19 Q But you are positive you made no written state-
20 ment about it?

21 A That is correct.

22 Q Did you mention the name Harry Johnson in that
23 statement?

24 A No, I did not.

25 Q Mr. Turner, do you belong to any family, crime

family?

A How do you mean that?

MR. MARTIN: Question withdrawn.

Q Are you a member of the Mafia?

A No, I am not.

Q Are you a member of the Costra Nostra?

A No, I am not.

Q Are you a Capo?

A What is a Capo?

Q Do you know any members of the Mafia?

A Not personally, no.

Q Do you know any members of an organized crime family?

A No, I do not.

MR. MARTIN: No further questions.

THE COURT: We will suspend now for lunch and return at five minutes to two, please.

(Jury and witness excused.)

THE COURT: Do you have any witnesses after this witness is finished with cross-examination?

MR. KENNEY: We have two witnesses, your Honor. We have a police officer who will be here. Perhaps we can call him at 2 o'clock. He is just to tell us what the geographic boundaries of the Ninth Precinct are.

And then we have Inspector Kievit to testify.

MR. DIRENZO: I will stipulate the boundaries of the precincts, as long as he represents them to be that.

THE COURT: Why not.

MR. KENNEY: Mr. Martin has refused.

THE COURT: You won't stipulate to the boundaries of the 9th Precinct?

MR. MARTIN: I would rather that your Honor take judicial notice.

THE COURT: I can't take judicial notice because I have no knowledge of where the 9th Precinct is.

MR. MARTIN: Your Honor, there is evidence in the record.

THE COURT: I will not take judicial notice. Will you concede the boundaries of the 9th Precinct?

MR. MARTIN: If it is going to be permitted in, I think I should be permitted to inquire into the condition of the vehicle; there is evidence in the record already it was picked up in the 9th Precinct.

THE COURT: He is only going to ask the witness the boundaries of the precinct. Now, you had a witness on the stand who testified as to the condition of the vehicle from 7 o'clock at night till the next day; you already had the postal man on. I don't know if this

witness was even present at the time. You are being asked to concede the boundaries of the 9th Precinct.

MR. MARTIN: As it relates to documents already in evidence. It is already in evidence as to the 9th Precinct.

THE COURT: I am asking you, will you concede? Yes or no?

MR. MARTIN: I think in the interest of my client, I would prefer not to.

THE COURT: As an attorney you are making that statement for the record?

All right, put the witness on the stand.

Is the defense ready to proceed this afternoon? We will reach it. I am just saying, you got to be prepared to proceed this afternoon, if you are going to proceed.

MR. DIRENZO: I promise, your Honor, I will be as ready as I will ever be.

(Luncheon recess.)

A F T E R N O O N S E S S I O N
2.10 P.M.

(Jury present.)

THE COURT: Call your witness.

MR. KENNEY: Your Honor, may we call Police Officer Alexander Baktis at this time?

THE COURT: Yes.

A L E X A N D E R B A K T I S, called as a witness
on behalf of the government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KENNEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Baktis, are you a police officer with the New York City Police Department?

A Yes, I am.

Q And how long have you been so employed?

A Four and a half years.

Q Would you tell us what your assignment was in April of 1973?

A I was assigned to the Special Events Squad which did patrol in the 9th Precinct.

Q And would you tell us what borough that was attached to?

1
2 A Manhattan.

3 Q Was it part of your duties at that time to be
4 familiar with the precinct lines?

5 A Yes, it is.

6 Q Could you tell us where you are stationed at
7 this time?

8 A The 9th Precinct.

9 Q Could you tell us what the boundary lines of the
10 9th Precinct of the New York City Police Department were
11 in April of 1973?

12 A The west boundary was Broadway, the south
13 boundary was East Houston, the east boundary was the East
14 River, and the north boundary was 14th Street.

15 MR. KENNEY: Your Honor, may the witness go to
16 Government's Exhibit 14 and just draw a line where those
17 boundaries are on the three sides of the pier?

18 THE COURT: You may.

19 (Witness at chart.)

20 (Witness marked chart.)

21 THE WITNESS: 14th Street is not on there.

22 THE COURT: All right. That is okay.

23 MR. KENNEY: We have no further questions of
24 this witness.

25 THE COURT: Mr. Dizenzo?

MR. DIRENZO: No questions.

(Witness resumed stand.)

CROSS EXAMINATION

BY MR. MARTIN:

Q Officer Baktis, you are in the 9th Precinct today?

A Yes, sir.

Q And you were in the 9th Precinct during the entire month of April, 1973?

A No, sir.

Q When did you go into that precinct? When did you first enter?

A June.

Q June. Before coming down here today did you check the records of the 9th Precinct to see if a step van was recovered in your precinct?

A No, sir.

Q During the month of April, 1973?

A No, sir.

Q Do you know if in fact there are any records in your precinct to that effect?

A No, sir, I am not familiar with it.

MR. MARTIN: No further questions.

THE COURT: You may step down.

1 I am sorry. Mr. Hafetz?

2 MR. HAFETZ: No questions.

3 MR. HOPPER: No questions.

4 THE COURT: Thank you.

5 (Witness excused.)

6 J O H N T U R N E R, resumed.

7 THE COURT: Mr. Direnzo.

8 Are you finished, Mr. Martin?

9 MR. MARTIN: I am finished.

10 MR. DIRENZO: I think Mr. Hopper was going to take
11 him before me, with the Court's permission.

12 CROSS EXAMINATION

13 BY MR. HOPPER:

14 Q Mr. Turner, reference has been made to a state-
15 ment that you furnished on June 20th of 1973. I believe Mr.
16 Martin has questioned you about that statement.

17 I would like to ask you this: anywhere in that
18 statement did you mention that Billy McCloskey was present
19 participating in any manner on April 5, 1973, in this crime?

20 (Pause.)

21 Q Is it that you do not recall?

22 A I am not positive if it is in my statement or
23 not.

24 Q] Pardon me?

2 A I am not positive it is in my statement.

3 MR. HOPPER: May I have that statement, please?

4 THE COURT: Exhibit K for identification.

5 Is there a concession on this, Mr. Kenney?

6 MR. KENNEY: No, there is not.

7 THE COURT: All right.

8 Q Is that the statement? I direct your attention
9 to page 6 and ask you --

10 MR. HOPPER: Just a minute. May I approach
11 the bench, your Honor?

12 THE COURT: You may.

13 You may step down, Mr. Turner.

14 (Witness left the courtroom.)

15 (At bench.)

16 MR. HOPPER: If I understood, your Honor asked
17 Mr. Kenney if he would concede.

18 THE COURT: That he did not mention Billy's name
19 in the statement.

20 MR. HOPPER: Oh, no. I said on April 5th, in
21 connection with this crime.

22 THE COURT: Then I am sorry.

23 MR. HOPPER: He did mention Billy on other
24 occasions, but never on that date.

25 THE COURT: I misunderstood the question.

MR. HOPPER: We can have the question read back.

THE COURT: You can reframe the question, if I misunderstood it, and we now understand the question to be as to whether the witness ever mentioned Billy's name in Defendant's Exhibit K for identification in conjunction with the events detailed of April 5th.

MR. KENNEY: We do not concede, the reason we do not concede is page 8, the half-paragraph beginning on the page, the 5th line from the bottom, which reads:

"After that Billy McCloskey left to pick up his brother Mike."

MR. HOPPER: All right.

THE COURT: All right?

MR. HOPPER: Yes.

THE COURT: I think he testified to that on direct.

MR. HAPETZ: Unrelated to this -- I didn't want to waste another bench conference later -- are we going to have a stipulation to the jury that the Myers and Mann statement was a sworn statement? We talked out of the jury's presence before you pointed out, I think, that it was a sworn statement. Yesterday the witness had indicated that it might not have been. Can we have a stipulation told to the jury that it was a sworn statement?

1 THE COURT: I'll tell that to the jury, yes.

2 MR. HAFETZ: Thank you.

3 (In open court.)

4 THE COURT: My recollection is that the witness,
5 Terry Myers, agreed that his statement to the postal in-
6 spector on the day of his arrest was a sworn statement,
7 but that the witness Mann said it wasn't a sworn state-
8 ment. It happens to be a sworn statement. You will
9 recall both of them signed it. And that was the document
10 that was used in the cross-examination of both of those
11 witnesses.

12 I am really telling you -- and everybody
13 concedes -- that it is a sworn statement. Go ahead.

14 But that is not the statement that Mr. Hopper
15 is holding in his hand. What he is holding in his hand
16 is the statement given by the witness on the stand to the
17 postal inspector, an entirely different statement.

18 MR. HOPPER: I will withdraw the previous
19 question.

20 Q Mr. Turner, you testified that on April 5,
21 1973, you met people you mentioned in Katz Delicatessen
22 and you said that Billy McClockey was there. Now, I call
23 your attention to page 6 of your statement, and I refer
24 you to these questions:
25

1 "Q I recall your attention to April 5, 1973.
2
3 Did you meet that afternoon on that date at Katz's
4 Delicatessen?

5 "A Yes, I did.

6 "Q Where is Katz's Delicatessen located?

7 "A On East Houston Street in New York City.

8 "Q Who was present at that meeting?

9 "A Myself, Mike, Tommy, Chester, Godfrey and Terry."

10 Do you recall giving that answer?

11 MR. KENNEY: Excuse me. I believe it is Geoffrey.

12 MR. HOPPER: What did I say?

13 MR. KENNEY: Godfrey.

14 MR. HOPPER: I am sorry. Geoffrey. Let me
15 repeat that.

16 Q "Q Who was present at that meeting?"

17 Your answer: "Myself, Mike, Tommy, Chester,
18 Geoffrey and Terry."

19 A That's correct.

20 Q Pardon? I can't hear.

21 THE COURT: You gave that answer to that question?

22 THE WITNESS: I gave that answer.

23 Q You did not mention that Billy was present at
24 that meeting on that occasion?

25 A No, I did not.

Q Did I understand in your testimony about the trip to Pennsylvania that Billy McCloskey was not involved in the group that went to Pennsylvania; is that correct.

A No, it is not.

Q Did you say he did go to Pennsylvania?

A No, I didn't say he went. But I didn't say he didn't go.

MR. HOPPER: I didn't hear that.

THE COURT: He says he didn't say he went and he didn't say he didn't go.

Q Mr. Turner, you were asked by Mr. Kenney who went, and several times he asked you whether or not anyone else was in the car with Mike, and you said no. Is that correct?

A I said the only one I saw in the car was Mike. I believe that was my answer to that question.

Q Are you now saying that there was someone in the car with him?

A No, I am not.

Q Well, was there someone in the car with him?

A As I said before, the only one I saw in the car was Mike.

Q And you say your answer is you don't know?

A I don't know what?

THE COURT: I think his answer is the only one he saw in the car was Mike.

Q Now, would you turn to the front page of that statement before you, and I would like to read there questions and answers that were put to you on the occasion of your appearance before the grand jury on June 22, 1973, and I am reading from page 3, line 22:

"Q Mr. Turner, will you look at Grand Jury Exhibit No. 1, please.

"(Witness complies.)

"Q Now, is that your statement?

"A Yes, it is.

"Q And did you give that statement to Inspector Chassel and Inspector Cavolo on June 20 of this year?

"A Yes, I did."

Would you read from the top of that statement where it begins question and answer?

A You want the first question?

Q No, no, where it begins, "State of New Jersey, County of Essex," the next paragraph.

A You want me to read it aloud?

Q Yes.

A "This question-and-answer statement" --

THE COURT: Wait a second. I won't take it

1 read aloud. Tell him to read it, and then you can question
2 him on it.

3
4 Q Would you read it?

5 A Yes, I have read it.

6 Q And now I would ask you to read the last page.

7 I call your attention to the bottom where it
8 says, "Sworn and subscribed to," and the signatures.

9 A Yes?

10 Q Now, isn't it a fact that the statement that
11 you have before you was the statement which you gave to
12 Postal Inspectors Leo F. Shatzel and Postal Inspector
13 Kenneth Kievit?

14 A Yes, this a copy of the statement I gave them.

15 Q That you gave to Kenneth Kievit and Leo F.
16 Shatzel, is that correct?

17 A That is correct.

18 Q What statement did you give to Inspector Chassel
19 and Inspector Cavelo?

20 MR. KENNEY: Objection.

21 May we approach the bench?

22 THE COURT: I don't follow you. You mean
23 Defendant's Exhibit K for identification?

24 MR. HOPPER: I would like to find out what it is.
25 I have read from the grand jury testimony where he identi-

1
2 filed a statement given to Chassel and Cavelo. This is given
3 to two different people.

4 THE COURT: All right, I will take it.

5 Q Do you know Chassel and Cavelo?

6 A I don't.

7 THE COURT: Keep your voice up, Mr. Hopper.

8 A I donot know any Cavelo, no.

9 Q Pardon?

10 A I do not know any Cavelo.
11
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T2

Q Let me just go back to try to refresh your recollection. On that day of the grand jury, do you remember how many grand jurors there were?

THE COURT: I think that is irrelevant.

A No.

Q Let me read you this question:

"Mr. Turner, will you look at Grand Jury Exhibit 1, please."

There is a comment, "Witness complies."

Did you look at the statement that was handed to you at that time?

A Yes, I did.

Q Were you then asked at page 4, line 3:

"And did you give that statement to Inspector Chassel and Inspector Cavalo on June 20 of this year?"

Your answer is, "Yes, I did."

Do you recall that question being asked and you giving that answer?

A I recall the question, but not with those two people involved.

THE COURT: When was the statement given, Exhibit K, that you have in your hand?

MR. HOPPER: June 20.

THE COURT: To whom?

MR. HOPPER: Assistant Inspector Leo F. Shatzel and Postal Inspector Kenneth Kievet. In the statement questioning him about, it is Leo F. Shatzel.

THE COURT: The same man?

MR. HOPPER: One of them.

THE COURT: Are you trying to point out that the statement given to this witness before the grand jury had been given to Shatzel and Kievet, whereas when he was asked the question before the grand jury he says he gave it to Chassel and Cavelo?

MR. HOPPER: I am trying to find out if there is another statement.

THE COURT: Did you give two statements?

THE WITNESS: No, I did not.

Q When were you arrested on the charges in this case, Mr. Turner?

A On August 13.

Q August 13?

A This year.

Q Were you on the street between June 20 and August 13?

A Yes, I was.

Q How many men did you say were participants in the actual furtherance of this crime on April 5?

2 A I am sorry. I didn't hear the beginning of the
3 question.

4 Q How many men or people did you say were partici-
5 pants, those who perpetrated this crime, April 5, 1973?

6 A How many people were actually involved all
7 together?

8 Q Yes. The people who took some role in the
9 events of the attempted robbery.

10 A You wish me to give you a figure?

11 Q I just wish the number.

12 A The number? Eight.

13 Q Mr. Turner, would you change that statement if
14 I informed you that in a statement given by Myers and
15 Mann on June 7, 1973, to two postal inspectors, this
16 question was asked and these answers were given by Myers:

17 "Forster: In other words, tell us where the
18 job was going to take place and how many people were
19 involved.

20 "Myers: The job itself involved five people.

21 "Forster:" --

22 MR. KENNEY: Page number.

23 THE COURT: What page?

24 MR. HOPPER: 3528, the statement made by Myers
25 and Mann on June 7, 1973.

MR. KENNEY: What page?

Q When you say five people --

MR. KENNEY: Can I have the page number?

MR. HOPPER: Page 6.

THE COURT: I thought he gave it to you.

MR. KENNEY: No.

Q "Forster: In other words, tell us where the job was going to take place and how many people were involved.

"Myers: The job itself involved five people.

"Forster: When you say five people, you mean five people at the scene? Is that correct?

"Myers: Right."

Would that cause you to change your statement as to how many people were involved at the scene as participants?

A No, it would not.

Q Mr. Turner, let me see if I understand what was supposed to happen. You had one man to drive the van, is that correct, which would stop and block the postal truck?

A That is correct.

Q You had two men to go to either side of the postal truck, one to take the guard, and one to take the driver?

Is that correct?

A That is correct.

Q And then those two men who took the driver and who took the guard would put them in the rear of the van?

Is that correct?

A That is correct.

Q Do I assume that they would get into the van with them, and as the van drove away, would tie them up?

A They were supposed to get into the van with them.

Q And tie them up?

A I believe that was part of the plan.

Q Then there was another man to take the postal truck and take that somewhere, and that was yourself?

Is that correct?

A That is correct.

Q Then there was a car to pick up Meyers and Mann after they had completed what they were doing in back of the truck? Is that correct?

A That is correct.

THE COURT: You say in back of the truck? You mean the truck or the van?

MR. HOPPER: I am sorry, the van.

Q Is that correct?

A That is correct.

Q That is five people, is it not?

A Yes, it is.

Q Now, calling your attention to the map, and I am referring to Peck Slip between Water Street and this street which is unmarked --

MR. HOPPER: Can you tell me what that street is?

MR. KENNEY: South Street.

Q Between Water Street and South Street is Peck Slip at that point a one-way or a two-way street?

A I believe it's a two-way street.

Q Calling your attention to this square which would be bounded by Peck Slip, Front Street, Frankfort Street and South Street, is there a structure on that entire square?

A I don't know about the entire square, but there is a structure on the corner, right there (indicating).

Q A very small structure, is it not?

A I'm not sure how high it is, but I know there is a structure there.

Q Now, there is something here that I am referring to between Front Street and South Street, a box with the initials PK.

Is there any structure, any edifice of any kind

in this location between Front Street and South Street?

A Well, at that point that you are referring to they have parking, head-on parking.

Q But there is no structure, just automobiles that park there?

A That is right.

Q So that from Front Street to South Street on Peck Slip there is actually no structure?

A No, there is none.

Q What was the route as best you know that the mailtruck would arrive by at the Peck Slip Station?

A Well, you mean once it left the Federal Reserve Bank? You wish me to show you on the map? Or do you want me to explain it to you?

Q Yes.

(Witness goes to map.)

THE WITNESS: The Federal Reserve Bank is located at this point on Maiden Lane. This mailtruck leaves the Federal Reserve Bank, makes a lefthand turn and goes up to Nassau Street; then it makes a righthand turn to John Street; then it makes a righthand turn on John Street and goes down John Street to Pearl Street, at which point it makes a lefthand turn on Pearl; it goes on Pearl to this point, Pearl and Fulton Street; it makes a half right turn

to Water Street, and a turn to the post office.

Q Would you mark it for me with a V,
where the van was parked with you in it?

THE COURT: When?

Q As you were awaiting the approach.

THE COURT: You are talking about April 5th?

THE WITNESS: It was parked right here
(indicating).

MR. HOPPER: Just put a V there, please.

(Witness marked as requested.)

Q There has been some testimony that the mailtruck
was a 5-ton truck? Is that your testimony also?

A What do you mean by a 5-ton truck?

Q I was going to ask you to tell me. How long was
the truck?

A How long was the truck itself or the cab?

Q Just point to two places in this room and say
it's from about there to there in length.

A Well, the body on the truck appeared to be the
standard size truck body, which is about 20 feet in length.

Q How many?

A 20 feet.

Q And then how big was the cab?

A And the cab is an additional four, maybe five

mp Turner-cross

feet.

Q How high is it?

A From the ground I would say somewhere from 11 feet above.

Q Mr. Turner, if you don't understand this question, please tell me. Do you know whether or not there is a substantial difference on the murder count which you were facing and on the robbery count when a person who participates in the furtherance of the crime on the day it occurred as opposed to someone who may be involved and who did not take an active role?

MR. KENNEY: Objection. The Court will charge on that.

THE COURT: Sustained.

MR. HOPPER: I asked him if he understood.

THE COURT: I will charge the jury on the law of the case. The witnesses testify as to facts.

Q Mr. Turner, is it your understanding on the pleas that you have taken you can get anything from zero to fifteen years?

A That is correct.

MR. HOPPER: I have no further questions.

THE COURT: Mr. Hafetz?

MR. HAFETZ: No questions.

THE COURT: Mr. Direnzo?

CROSS EXAMINATION

BY MR. DIRENZO:

Q Mr. Turner, my name is Direnzo and I represent Mr. Carroll. How are you?

Mr. Kenney has advised the Court and jury that you were, have been, a government informer? Is that correct, sir?

A That is correct.

Q Would you be good enough to tell us when you first became a government informer?

A It is approximately two and a half years ago from this day.

Q In other words, before March of 1973 you were on the government rolls as an informer? Correct, sir?

A To the best of my knowledge, that is correct.

Q You say to the best of your knowledge you were. Weren't you?

A Well, I was only dealing with one agent. I don't know how the government classified me.

Q In dealing with one agent, I take it that you had agreed to give information to the government in connection with any knowledge that came to you in connection with the commission of any crime or crime about to be

1 committed? Is that a fair statement, sir?

2 THE WITNESS: Could you repeat the first part
3 of that, please.

4 (Question read.)

5 A Yes, that is true.

6 Q And I take it during the course of your informer
7 status you did give information, without telling us what
8 it was? Did you give information?

9 A That is correct.

10 Q Then I take it you gave information on dif-
11 ferent occasions concerning different crimes? Is that
12 correct, too, sir?

13 A Yes, it is.

14 Q You had been convicted of other crimes, is that
15 correct, at that time?

16 A No, that is not correct.

17 Q You were never convicted of a crime? Is that
18 your testimony, sir?

19 A Well, prior to this I had never been convicted.

20 Q Is it a fact that you were not convicted of any
21 crimes in the service you were rendering the government?

22 MR. KENNEY: Objection, your Honor.

23 THE COURT: Sustained.

24 Q Were you designated a government employee in
25

1 the role that you had as a government informer?

2 A To the best of my knowledge, I was not.

3 Q At any time while you were rendering this
4 information or was to render this information, did you
5 receive payment for the services you were performing?
6 Any money from the government?
7

8 A Yes, I did.

9 Q For what period of time in the performance of
10 your role were you receiving money from the government?

11 A Well, I was not receiving money on a regular
12 basis.

13 Q In other words, you were not getting it on a
14 salary basis? Correct?

15 A That is correct.

16 Q On what basis were you receiving the money?

17 A On the basis of information supplied.

18 Q In other words, you would be paid by the case,
19 so to speak, is that correct? As you rendered assistance
20 in a given case, you gave information, you were rewarded
21 for your services? You got paid? Is that correct?

22 A Yes, that is correct.

23 Q By the way, were you paid by check or cash when
24 you received these payments?

25 A It was by cash.

1 Q On how many separate occasions would you say that
2 you received these stipends?

3 A Well, as I said before, it varied. There were
4 many different occasions.

5 Q I realize that, sir. By the way, if you mis-
6 understand a question or it is not clear, don't hesitate
7 to ask me, and I will repeat it. The Judge wants me to.

8 On how many separate occasions did you receive
9 sums of money, without telling us the amount, if you
10 remember?

11 A I will take a guess. Approximately 20 times
12 about, but I couldn't be positive.

13 Q So you can state that it was at least on 20
14 separate occasions that you supplied information to the
15 government for which you received sums of money? Correct?

16 A That is correct.

17 Q And on these occasions, on any of them, if not
18 all of them, when you received moneys, which always involved
19 the commission of a crime, were you ever a participant in
20 any of the matters for which you were being paid?

21 A Yes, I was.

22 Q By the way, can you tell us -- and you don't need
23 an adding machine for this -- can you tell us approximately
24 how much money you have received from the United States
25

Government?

A I would say it was less than \$5000.

Q When you say it was less than \$5000, that was for a period of how long before March of 1973? Take the starting date and the first day of March as the termination date. What period of time did you receive this money for?

A Up until approximately March 1st.

Q From when? I would like to get the commencement date.

A Two years prior to that.

Q So that for an overall period you average somewhere around \$2500 a year?

A That would be correct.

Q Now, during the time when you were receiving 20 payments, were you also receiving subsistence allowances from the government?

A No, I was not.

Q You never got any subsistence allowance?

A Other than the money I stated, no.

Q The government never paid your rent?

A No.

Q Nothing like that? By the way, did the government ever provide you with an assumed name that you could use?

1 A No, they have not.

2 Q While you had this arrangement with the Federal
3 Government, did you have any similar arrangement with any
4 state agency, either New York County District Attorney's
5 office, or any district attorney or district attorneys
6 representing counties in the State of Jersey?
7

8 A No, I did not.

9 Q Consonant with the arrangement that you had
10 with the United States Government, the government did make
11 it clear to you, did it not -- when I say "the government,"
12 a representative of the government, that you were not to
13 go out and commit crime? Correct?
14

15 A That is correct.

16 Q They told you you had to be law-abiding?

17 A That is correct.

18 Q At the time and prior to April 3, 1973, you still
19 occupied that status, is that correct, as an employee for
20 the government in the manner in which you described?
21

22 A That is correct.

23 Q During that period of time I take it that you
24 performed your services well? Is that correct, too?
25

A Well, I can't say how well I performed them.

Q Well, let's put it this way: you didn't deceive
your employer, the United States Government?

1
2 A Yes, I did.

3 Q When did you deceive the United States Govern-
4 ment?

5 A When did I deceive them?

6 Q When did you deceive the United States Govern-
7 ment?

8 A When I did not inform them about my case.

9 Q Let me put it to you this way: "This case,"
10 the government mailtruck robbery?

11 A That is correct.

12 MR. KENNEY: I can't hear all of Mr. Durenzo's
13 questions. May he step back a bit?

14 MR. DIRENZO: I am sorry.

15 Q So that we understand one another perfectly
16 clear, the first and only time you deceived our government
17 was when you did not disclose to the agent with whom you
18 were working the fact that there was going to be the hijack-
19 ing of a truck? Correct? --

20 A That is correct.

21 Q Is that answer true?

22 A What do you mean "Is that answer true"?

23 Q The answer you just gave us, that this is the
24 first time you deceived them?

25 A Yes, it is.

1 Q Well, that Secaucus robbery we were told about,
2 that occurred prior to April 5, 1973, did it not?
3

4 A Yes, it did.

5 Q And you received money representing the con-
6 traband or proceeds of that robbery? Is that correct?

7 A That is correct.

8 Q You took that money and you put it in your
9 pocket? Is that correct?

10 A That is correct.

11 Q Now, did you report to the agent with whom
12 you were cooperating the fact that you had received money
13 in this robbery and that a robbery had, in fact, been com-
14 mitted, that you were a participant in the robbery, and did
15 you tell who the other participants were?

16 A No, I did not. He had no jurisdiction in the
17 matter.

18 Q I beg your pardon?

19 A He had no jurisdiction in the matter.

20 Q Oh. So that we understand one another, you
21 are telling us that the only reason why you did not
22 report this to an FBI agent is because the FBI agent had
23 no jurisdiction over this robbery because it was a State
24 robbery, it occurred in Jersey, and it didn't have Federal
25 jurisdiction? Is that correct?

1
2 A That is correct.

3 Q When you made this arrangement with the United
4 States Government and you made the promise that you told
5 us you made, did the agent with whom you were cooperating
6 and the agent through whom you were receiving the money
7 tell you, "I only want you to give me information con-
8 cerning Federal crimes, and not State crimes." Correct?

9 A That is correct.

10 Q That is exactly what he said?

11 A That is correct.

12 Q By the way, when he said this to you, did he
13 say to you, "Johnny Boy" -- or "Jackie Boy, you can go out
14 and commit robberies and you have my blessing"?

15 A No, he said if I commit any crimes in the State
16 or crimes he did not have jurisdiction in or that he was
17 not notified of prior to, I was on my own.

18 Q You were on your own? I understand that.

19 You went to Pennsylvania? Right?

20 MR. KENNEY: Would your Honor ask Mr. Drenzo to
21 stand back. I can't hear what is going on.

22 MR. DIRENZO: Mr. Kenney is right. It is an
23 old habit I acquired.

24 Q In order to go to Pennsylvania, you have to leave
25 Jersey? Is that correct?

2 A That is correct.

3 Q You crossed the State line and went to Pennsylvania?

4 A That is correct.

5 Q And that truck which was supposed to be located
6 at the truck stop in Pennsylvania, that was also a truck
7 carrying -- and you knew it -- ICC plates?

8 A Well, I didn't know, in fact, the truck would have
9 any ICC plates, but I assumed it would.

10 Q Well, you worked for that trucking company,
11 didn't you? Wasn't Werner the company that had that
12 particular truck? Or am I in error?

13 A I believe you are in error.

14 Q But, in any event, your assignment, together with
15 the people you were working with, was to hijack an over-
16 the-road truck?

17 A That is basically the idea.

18 Q You know an over-the-road truck goes over state
19 lines?

20 A Correct.

21 Q Consonant with the arrangement that you had with
22 the FBI agent who was paying you money, did you alert him
23 to the fact that you were going out to commit a Federal
24 crime?

25 A At the time it was impossible to get in touch

1
2 with the agent with whom I was working.

3 Q What do you have to do to reach that agent?
4 Call Lexington 4-7700?

5 A I don't know their number.

6 Q Isn't that the FBI number on 69th Street and
7 Third Avenue?

8 MR. KENNEY: Objection. It's not relevant to
9 this case.

10 THE COURT: Sustained.
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12/20/73
PM T-3

1 jkmch 1

Turner-cross

1919a

1573

2 Q Then, I take it from the answer you have just
3 given us that you took some steps to notify that agent?

4 A No, I did not.

5 Q I thought you told us that it was impossible
6 for you to reach that agent.

7 THE COURT: That doesn't mean that he took
8 steps.

9 Q You took no steps, using your own language, to
10 contact that agent, did you?

11 A Well, as I said before, at the time it was
12 impossible to reach the agent.

13 Q You didn't have enough time, is that what you're
14 telling us?

15 A I didn't have the opportunity to use the telephone.

16 Q It was something that happened on the spur of
17 the moment, and you couldn't get on the telephone and
18 make the call, is that correct?

19 A Well, I was in the presence of other individuals
20 who were about to possibly commit a hijacking. I couldn't
21 very well pick up the phone and call the agents.

22 Q That's understandable.

23 How much preparation was there in connection
24 with the Pennsylvania hijacking?

25 A How much --

jkmoh 2

Turner-cross

1574

Q -- preparation was there? There were discussions before, wasn't there?

A There was not that much discussion about the Pennsylvania encounter.

Q Let's take your word for it, Mr. Turner.
The truck returned from Pennsylvania, did it not --

THE COURT: What truck?

MR. DIRENZO: Withdrawn.

Q You returned from Pennsylvania, did you not?

A Yes, I did.

Q When you returned from Pennsylvania, that was sometime before April 5th?

A Yes, it was.

Q And there were times between the time that you returned from Pennsylvania and April 5th that you were alone, right?

A That is right.

Q You even testified that you went home to sleep on several occasions, you were by yourself, correct?

A That's correct.

Q Did you communicate with the agent who was giving you this money and explain to him about this little mischievous deed of yours?

jkmoh 3

Turner-cross

1575

1 A No, I did not.

2 Q And I take it you didn't think it was important,
3 right?

4 A That's correct.

5 Q And you tell us you knew that this was going to
6 be the hijacking of a mail truck?

7 A That's correct.

8 Q Is that true?

9 A Yes, it is.

10 Q When do you say you knew that the truck to be
11 hijacked was a United States mail truck?

12 A I believe the first time that I had seen the truck
13 was on the 19th of March.

14 Q March 19, 1973; that is your testimony. Correct,
15 sir?

16 A Correct.

17 Q And from March 19, 1973, to April 5, 1973,
18 were there occasions when you were alone?

19 A Yes, there were.

20 Q Were there occasions where you could have had
21 a telephone available to you to notify the FBI agent
22 who befriended you that preparation was being made for
23 the hijacking of a Federal mail truck?

24 A Yes, I had the opportunity.

June 4

Turner-cross

1576

1
2 Q But you did not do it; correct?

3 A That's correct, I did not.

4 Q Now, isn't it a fact that the reason why you
5 didn't do it is because you felt that, hopefully, you
6 could get the proceeds of that robbery, put it in your
7 pocket, and nobody would be any the wiser; is that true?

8 A That is the truth.

9 Q So, you had no reluctance in deceiving or with-
10 holding information from your good friend and financial
11 provider in the FBI, did you?

12 A I'm sorry. I missed the first part of that
13 question.

14 MR. DIRENZO: Would the reporter read it, your
15 Honor?

16 THE COURT: Yes.

17 Would you, John?

18 (Record read.)

19 A No, I did not.

20 Q In other words, you would lie just to put some
21 money in your pocket, isn't that basically true?

22 A I didn't look at it like I was lying. I was
23 just avoiding the truth.

24 Q You just avoided the truth?

25 A Evaded. I used the wrong word.

jknch 5

Turner-cross

1577

Q I see. I learn things every day. That's a good expression.

Now, I think it's been covered --

MR. DIRENZO: Don't hold it against me, Judge Metzner, please.

Q -- it's a fact that the Secaucus robbery was a robbery perpetrated upon a previous employer of yours? Yes or no; that's all.

A I was a co-worker.

Q Yes, but you were employed by that company, right?

A That's correct.

Q Now, you told us -- and I'm not going through all of the dates; the jury has heard enough about all of it -- let me invite your attention to March 19, 1973.

Was it your testimony this morning that at 11:30 that morning you had a conversation with Tommy Carroll in Wall's Tavern?

A No, I don't believe that was my testimony.

Q On the 19th, do you know whether you saw Tommy Carroll?

A Yes, I did.

Q Did you testify --

A I said yes, I did. I saw Tommy. You asked me if I saw Tommy Carroll, and I said yes, I did.

jkmch 6

Turner-cross

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Q. Right. Did you also say you saw him twice that day?

A Yes, I did.

Q The first time you saw him was 11:30 in the morning?

A No.

THE COURT: No.

Q No? What time do you say you saw him for the first time on the 19th?

A Approximately 6:00 p.m. in the evening.

Q When was the second time?

A It was later on that evening.

Q Sometime after 6:00 p.m.?

A That's correct.

Q You testified yesterday, in your testimony that you gave only yesterday, you did not say that you saw Tommy Carroll at 11:30 in the morning on the 19th?

MR. DIRENZO: I invite the Court's attention and Mr. Kenney's attention to Page 1369.

Q See if this refreshes your recollection: -- By the way, do you have a good memory or a bad memory, if you know?

A It's good sometimes, and sometimes it's not so good.

jkmch 7

Turner-cross

k 1579

Q After Mr. Kenney put some questions to you, he put the following question to you and you made the following answer:

"Q What was the next day that you did something or participated in conversation relating to this case?

"A It was the following Monday."

Do you recall making that answer to that question yesterday?

A Yes, I do.

Q And then do you recall this question being put to you and making the following answer:

"Q And do you know the date?

"A It was the 19th of March."

Do you recall that answer to that question?

A Yes, I do.

Q And I go down, and ask you whether you recall this question and answer:

"Q What time of the day, do you recall?

"A It was approximately 11:30 in the morning."

Did you make that answer to that question only yesterday?

A I believe I did.

Q Now, was that answer accurate?

A No, to the best of my knowledge it's not accurate.

Q So that you now, as you testify here from that witness chair, state that you did see him at 11:30 in the morning?

THE COURT: See who?

MR. KENNEY: Objection.

THE COURT: See who?

MR. DIRENZO: Carroll.

THE COURT: You haven't read any question there with Carroll's name in it.

MR. KENNEY: It doesn't appear in there either, your Honor.

MR. MARTIN: Your Honor --

THE COURT: I'm sorry. I'm talking to Mr. Direnzo. He's looking something up now, and you just wait till we finish.

MR. MARTIN: Will Mr. Kenney look at the preceding page?

THE COURT: You read it. All the jury has heard is what you are reading for this witness in front of them and you never once mentioned the name, Carroll.

MR. DIRENZO: Good enough.

THE COURT: So, therefore, you can't draw from the questions that you have just read in front of the jury that Carroll was involved.

MR. DIRENZO: Your Honor, I yield.

Q You were talking about, yesterday, you were testifying about the proposed DiGiorgio robbery; do you recall that?

A Yes, I do.

Q Was this question put to you:

"Q Would you tell us what the DiGiorgio robbery is, what exactly you suggested to Mr. Carroll?"

Do you remember that question?

A I believe that -- yes, I do.

Q "A Well, I informed Mr. Carroll that the place where I had previously worked, the shop steward used to take the payroll checks and cash them on Thursday, When I said to him, he said, 'Yes, I know about that, but there was no way I could do it because I know him'" -- meaning you couldn't do it because you knew him; right?

A No.

Q Who said that?

A Tommy Carroll said that.

Q Oh, Tommy Carroll.

Now, we're talking about a conversation between you and Tommy Carroll, is that correct?

A That's correct.

THE COURT: On the 18th?

MR. KENNEY: On the 16th, your Honor.

THE COURT: On the 16th.

MR. DIRENZO: I will read them all down so it follows chronologically.

THE COURT: What you just read to him is a conversation which he says took place on March 16th.

MR. DIRENZO: All right.

Q "Q Was anything else said at that time?"

I skipped a question.

THE COURT: Don't skip questions. It will be easier then.

Q "A So he said, 'Well, we'll have to see what we can come up with.'"

Do you remember that answer?

A Yes, I do.

Q Was this question put to you, and did you make the following answer:

"Q Was anything else said at that time?"

"A No, not at that time."

That is a correct answer to that question?

A Yes, it is.

Q Was this question put to you:

"Q What was the next day that you did something or participated in conversation relating to this case?"

1 "A It was the following Monday."

2 Did you make that answer to the question?

3 A Yes, I did.

4 Q Only yesterday.

5 A Yes, I did.

6 Q Was this question put to you and did you make
7 the following answer:

8 "Q And do you know the date?

9 "A It was the 19th of March."

10 Now, is there any question but this was an
11 alleged conversation you say you had with Tommy Carroll --

12 THE COURT: I'm sorry, Mr. Direnzo, that question
13 does not sustain that interpretation.

14 MR. DIRENZO: Well, I disagree with your Honor.

15 THE COURT: You look at Line 10. That is the
16 question you're reading: "What was the next day that you
17 did something," not that he participated with Carroll.
18 The next day that he did something. Not with Carroll.

19 Now, you keep on reading and you will find the
20 first person he spoke to at 11:30 was only Mike, not Carroll.

21 MR. MARTIN: If your Honor please, I am going
22 to object to that and ask that it be stricken.

23 THE COURT: Your objection is overruled.

24 MR. MARTIN: I'd like to move for a mistrial, if
25

your Honor please.

THE COURT: Denied.

You didn't ask this man, he wasn't asked about his conversation with Carroll. "When was the first time you had a conversation regarding this matter?" It didn't mention Carroll.

MR. DIRENZO: As far as I'm concerned, your Honor, it's a question of semantics but --

THE COURT: Not semantics, it's perfectly clear. Carroll's name isn't mentioned there.

MR. DIRENZO: It's perfectly clear, but I will not argue with your Honor.

THE COURT: Is Carroll's name mentioned in that question?

MR. DIRENZO: The previous questions are mentioning Carroll, your Honor.

THE COURT: March 16th.

MR. DIRENZO: It was, and I have to assume when he says there's further conversation, it relates to Tommy Carroll.

THE COURT: It did not.

MR. DIRENZO: All right.

THE COURT: "Any conversation."

MR. DIRENZO: I yield.

THE COURT: Go ahead.

MR. DIRENZO: But I don't agree, so don't hold it against me, please.

THE COURT: All right, the jury can have it read back to them again.

MR. DIRENZO: Thank you.

Q Now, are you saying now that you had no conversation with Tommy Carroll on the morning of March 19th?

A That's correct.

Q I beg your pardon?

A That's correct.

Q And there is no doubt about it in your mind at all; correct?

A I have no doubts. I had no conversation with Tommy on the 19th.

Q As a matter of fact, you're positive you didn't have any conversation with Tommy Carroll in the morning of the 19th; that is your testimony now?

A That's correct.

Q Let me invite your attention to March 22, 1973. Did you have any conversation with Mr. Carroll on the 22nd of March?

A Yes, I did.

Q Did you have a conversation with him on the 22nd

2 of March, in the morning of that day?

3 A No, I did not.

4 Q What time do you say you had a conversation with
5 Tommy Carroll that day?

6 A That day was approximately 6:00 o'clock in
7 the evening when I first spoke to him.

8 Q Tell me, did you have a conversation with him
9 on March 23, 1973?

10 A Yes, I did.

11 Q What time of the day did you have a conversation
12 with him that day?

13 A I believe it was approximately 11:30 in the
14 morning.

15 Q And where do you say that conversation took
16 place?

17 A Wall's Tavern, North Bergen.

18 Q Wall's Tavern, in Jersey; right?

19 A That's correct.

20 Q And you are as sure about that date and that
21 morning as you are about all the other dates you gave in
22 this case; right?

23 A I'm not that sure of the day, but I'm pretty
24 sure of it.

25 Q March 26, 1973, did you have a conversation with

1 Mr. Carroll that day?

2 A Yes, I believe I did.

3 Q Will you tell us what time you had a conversation
4 with him on that day?

5 A I believe it was approximately 11:30 in the
6 morning.

7 Q And you are as sure about that as well, correct,
8 sir?

9 A Yes, I am.

10 Q Did you have a conversation with Tommy Carroll
11 March 27, 1973?

12 A Yes, I did.

13 Q What time did you have a conversation with him
14 then?

15 A It was approximately the same time, 11:30 in
16 the morning.

17 Q 11:30 in the morning.

18 Sometime during your direct examination, you
19 mentioned that Tommy couldn't be available because he
20 was in court on a certain day. Do you recall giving
21 that answer, which was permitted over our objection? Do
22 you recall that?

23 A Yes, I believe I do.

24 Q What?

1
2 A Yes, I do.

3 Q Now, will you refresh your recollection --

4 MR. DIRENZO: Question withdrawn.

5 Q Did you know he was in court?

6 A Not in fact, no, I did not.

7 Q Did you know that Thomas Carroll was in court
8 on March 23rd, March 26th and March 27th?

9 A Do I know he was not in court is what you said.

10 Q Do you know that he was in court those days?

11 A No, I know he was not in court those days.

12 Q You say you know he was not in court? Is that
13 your testimony?

14 A No, it's not.

15 Q What are you saying now, it is or is not your
16 testimony?

17 A I do not know for a fact that he was not in
18 court those days.

19 Q Well, if he was in court at 11:30 in the morning
20 on each of those days, he couldn't have been in Wall's
21 Tavern at that time, could he?

22 A Well, he wasn't in court at those times on those
23 days.

24 MR. DIRENZO: Thank you, Mr. Turner.

25 I have no further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. KENNEY:

Q Mr. Turner, you were asked by Mr. Hopper how many people were involved in the event, and you answered eight.

Will you tell us who those eight people were?

MR. MARTIN: I object, if your Honor please.

THE COURT: Overruled.

A It was myself, Tommy Carroll, Mike McCloskey, Chester Crawford, Geoffrey Myers -- I mean Geoffrey Mann, Terry Myers and Billy McCloskey and Harry Johnson.

Q And I believe Mr. Hopper asked you for the various jobs which were done, and he said it would take two people to take someone off the truck, and you said, "That's correct."

A That's correct.

Q Who was supposed to do that?

A That was supposed to be Myers and Mann.

Q And somebody would be driving the van. Who was to do that?

A That was Mike McCloskey.

Q And someone would drive the mail truck.

A That was my function.

2 Q Would you tell us what the other four people
3 were to do, if anything?

4 A Well, Chester Crawford's function was, if the
5 robbery attempt had been successful, to pick up Terry
6 Myers and Geoffrey Mann later on, and it was Billy
7 McCloskey's function to be -- to spot the mail truck coming
8 out of the Federal Reserve Bank, and it was Tommy Carroll's
9 function to keep riding around the area and pick up
10 Billy McCloskey once he had spotted the mail truck and
11 return to inform myself and Mike McCloskey who were waiting
12 in the van, and then for us, to let us know that the
13 truck had left the Federal Reserve Bank, and then it was
14 Tommy's function to follow me in the van to the location
15 in New Jersey.

16 Q And where were you supposed to go in New Jersey?

17 A I was supposed to take it to Linden, New Jersey.

18 MR. MARTIN: I'm going to object to this, if
19 your Honor please.

20 THE COURT: Overruled.

21 Q Where in New Jersey?

22 A You mean you want the town or specific location?

23 Q Specific location, if you know.

24 A Well, I was supposed to take it to a factory
25 that was owned by an individual, by a guy by the name of

jkmch 19

Turner-redirect

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Larry.

Q Did you know his last name?

A No, I did not.

Q Do you know his last name now?

A I'm not positive of it.

Q I show you what has been marked Government's Exhibit 43 for identification, and ask you if you can identify that.

A I believe this is a copy of the statement I made to the postal inspector on June 20th.

Q And is that the same one that's been marked McCloskey's Exhibit K that you have been shown? I show you that.

A I have a copy of it here. It appears to be the same.

Q Now, is Government Exhibit 43 the one that you saw in the grand jury?

THE COURT: You mean is it the actual piece of paper that he held in his hand?

MR. KENNEY: That's right.

A I couldn't be positive if this is the actual copy I had in my hand at the time.

Q Well, do you see a stamp on the face of it?

A There is a stamp here that says, on the face of

it, "Exhibit No. 1, June 22, 1973, U.S. Grand Jury, S.D. New York."

Q Was that stamp on it at the time you saw it in the grand jury?

A I believe it was.

Q Now, I show you Page 3 of what has been marked 3533 for identification.

Can you tell me -- you see questions and answers there, do you not?

A Yes, I do.

Q And do you recognize them? Were you there when the questions were asked and the answers were given?

A Yes, I believe I was.

Q And does it indicate there in that exhibit that the statement was marked as Exhibit No. 1 in the grand jury?

A Yes, it does.

Q Now, would you tell us who was present when you gave that statement?

A When I gave that statement here?

Q Yes.

A The two postal inspectors, Leo Shatsel and Kenneth Kievit.

Q Would you look further at that Exhibit 3533

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1 and see if it has the names of postal inspectors in it on
2 Page 3 or Page 4? On Exhibit 3533. I believe you're
3 looking at Exhibit 43.
4

5 A Oh, I'm sorry.

6 What page did you say, Mr. Kenney?

7 THE COURT: What's the relevance of all this?

8 MR. KENNEY: Well, your Honor, I attempted
9 several times during Mr. -- I believe it was Mr. Diranzo's
10 questioning on this point, to make a representation, and
11 I'm just attempting to show that these are simply errors
12 in reporting.

13 MR. MARTIN: I object to that, if your Honor
14 please, and move for a mistrial.

15 THE COURT: Denied. I assume that Mr. Hopper's
16 questions were to find out whether the witness had given
17 another statement, where a different inspector was with
18 the first inspector. That was the purpose of his statement.
19 And the witness said no he did not give one.

20 MR. KENNEY: All right.

21 THE COURT: Was that the whole purpose of your
22 questioning, Mr. Hopper?

23 MR. HOPPER: It appeared to be a different
24 statement.

25 THE COURT: Yes. All right.

Q When you were acting as an informant for the Federal Bureau of Investigation, did the agent you were working with give you instructions as to how and when to inform them?

A Yes, he did.

Q Would you tell us what they were?

MR. DIRENZO: Objected to.

THE COURT: Overruled.

A The instructions that were given to me were that upon learning of any criminal activity of which he had jurisdiction I was to inform him directly, and then let him know whatever facts I had learned.

Q Did he tell you whether to inform you before you participated or after you participated?

A Oh, it was before, as soon as I received any information, even if it was only a hint of it.

MR. KENNEY: I have no further questions.

MR. MARTIN: Your Honor, may I ask on recross?

THE COURT: No, nothing on the redirect would call for any recross.

You may step down.

(Witness excused.)

THE COURT: Next witness, Mr. Kenney.

MR. KENNEY: The next witness is Kenneth Kievit.

KENNETH J. KIEVIT, called as

a witness by the Government, being first duly sworn,
testified as follows:

MR. MARTIN: May we approach the bench?

THE COURT: You may.

(At the bench.)

MR. MARTIN: If your Honor please, the present witness is a man who was in the courtroom throughout the testimony, throughout the course of the trial, and I think it's highly prejudicial for him now to get up to testify while he has been sitting listening to the previous testimony.

THE COURT: You have made no request of the Court that all witnesses be excluded during the course of the trial.

MR. MARTIN: I was under the impression that the Government had done that.

THE COURT: I don't know where you got the impression.

MR. MARTIN: I thought it was part of the pre-trial situation.

MR. HOPPER: If we know what he's going to offer to prove --

MR. KENNEY: I think a statement of what has

1 occurred can obviate the problem. Even though this
2 gentleman is the case agent and ordinarily in our practice
3 in the courthouse case agents are allowed to be in the
4 courtroom, he has not been in the courtroom at my request
5 when any testimony has been given, although at the various
6 recesses and before and after the trial he has been in
7 the courtroom.

8 THE COURT: All right.

9 (In open court.)

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MR. KENNEY:

13 Q Mr. Kievit, can you tell us what your occupation
14 is?

15 A Yes, sir. I am a postal inspector for the United
16 States Postal Service.

17 Q How long have you been so employed?

18 A I have been employed for the postal service
19 approximately eleven and a half years. I have been a postal
20 inspector approximately four years.

21 Q And you are stationed here in New York, is that
22 correct?

23 A Yes, sir, that is correct.

24 Q And is it true that you are, in fact, the
25

investigating officer and case agent on this case?

A Yes, sir, that is true.

Q I show you what has been marked Exhibits 27 through 29, including 29-A, B and C, and also Exhibit 31.

MR. KENNEY: If I may correct that, your Honor.

Q Exhibit 27, 29-A, B and C, and Exhibit 31.

Can you identify those exhibits?

A Yes, sir, I can. Exhibit 31 is a telephone bill for a phone listed to a Linda Myers in Washington, D.C.

Exhibit 27 are telephone bills listed to --

THE COURT: They're in evidence. They don't have to be identified by the witness.

Q Have you seen these before?

A Yes, sir, I have.

Q And have you reviewed them and prepared a chart from them?

A Yes.

MR. MARTIN: I'm going to object to this, if your Honor please.

THE COURT: Overruled.

Q I show you Government's Exhibit 44 for identification.

Can you identify that?

A Yes, sir, it's a chart that I prepared.

Q And would you tell us what items you took from these various phone bills to prepare that chart?

A From the various phone bills I took the calls made from Maria Vasquez' telephone to Wall's Tavern and from Maria Vasquez' phone to Myers' phone in Washington, D. C. I took the phone calls from Wall's Tavern to Maria Vasquez and to Myers' phone in Washington, and I took the phone calls from the phone of Myers in Washington to Maria Vasquez here in New York.

Q Were there any calls from Myers' phone in Washington to Wall's Tavern in New Jersey?

A Not to my knowledge, sir.

Q Does that chart accurately reflect all of the phone calls on the bills in evidence?

A It does, to the best of my knowledge, sir.

MR. KENNEY: Your Honor, we are going to offer Exhibit 44 for identification in evidence.

MR. MARTIN: I'm going to object, if your Honor please.

THE COURT: On what ground?

MR. MARTIN: It's irrelevant, encompasses dates long after the incident claimed here, it's beyond the scope of this case, it's totally irrelevant and remote.

In addition to it, I think it's highly prejudicial.

1 The actual documents are in evidence for the jury, and
2 I think for the officer now to get on the stand and testify
3 and give his version, I think is highly prejudicial.

4 THE COURT: He's not giving his version. He's
5 merely reflecting in a chart what appears in the documents.

6 MR. MARTIN: I think it's unduly emphasizing it.
7 It's in the record, the period of time.

8 THE COURT: Overruled.

9 What is your objection, Mr. Drenzo?

10 MR. DRENZO: I don't have an objection, but
11 I would like to know the purpose for which it's being
12 offered so that if I have an objection, then I can make
13 it.

14 If the only purpose is to show a call from a
15 number, outgoing or incoming, with a call to another
16 number, I have no objection.

17 THE COURT: Mr. Kenney?

18 MR. KENNEY: We will argue, your Honor, that the
19 jury will be able to infer from the facts in evidence that
20 it was Tommy Carroll who was making the calls to Wall's
21 Tavern.

22 MR. DRENZO: Then I would surely object, if
23 your Honor please, unless he's laying the foundation for
24 other evidence to establish that the caller at the given
25

time, on the given line, to the number called, he states he's going to identify as Tommy Carroll. But if it's just for a question of establishing a call --

THE COURT: I would think at this time the jury ought to take a recess while we deliberate this problem.

(The jury left the courtroom.)

THE COURT: Yes, Mr. Kenney?

MR. HAFETZ: Excuse me; may my client be excused for a minute?

THE COURT: Certainly.

MR. KENNEY: Your Honor, we'd like to show the chart to the Court, and we submit that there are two patterns which are obvious from looking at it. One is that there are calls from Maria Vasquez to Wall's, and then to Washington in an interrelated pattern. The times are in a column on the far left-hand side, and the length of the calls. The length of the calls indicates the leaving of messages, also.

THE COURT: Let me get this straight. You have set forth here -- what are the red numbers?

THE WITNESS: That is a.m., your Honor.

THE COURT: And these run chronologically?

MR. KENNEY: That's correct, your Honor. The red numbers tend to separate the days from others, so

they stand out.

THE COURT: And from these you want what?

MR. KENNEY: We argue that the pattern itself of calls from Myers' home in Washington to Maria Vasquez and Maria Vasquez to Wall's Tavern is some evidence, and we think admissible evidence to show the identify of Tommy Carroll.

We've submitted evidence that the phone at Wall's Tavern is a private telephone. Mr. Wall himself has testified that he has known Tommy Carroll longer than he's known any of the other three defendants and he is the only one who, in fact, pays him for phone calls or reimburses him. The other people, he said Mike McCloskey calls his bar, which is not a toll call, and there is little testimony that Turner used the phone at all.

THE COURT: The first five are calls from Vasquez to Wall's Tavern on four different days. On the fifth day you have a call from Myers to Vasquez. The next call is Vasquez to Myers. And Vasquez to Wall's. I don't think this proves that. I think you have in this record the live testimony buttressed by your telephone records that Crawford called Carroll at Wall's, that he received calls from Carroll at Wall's, that he used the Vasquez phone number, both Vasquez' and Wall's phone bills show

1 that this is true, that there were calls at least made
2 from those phones, and then there is proof of calls from
3 Myers to Vasquez' number, and Vasquez' number to Myers
4 which substantiates the live testimony of both Myers and
5 Crawford that such calls were made from those phone
6 numbers. I don't think you need the chart.
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8 MR. KENNEY: Well, your Honor, the reason we
9 prepared and are submitting this chart is that we don't
10 think that the jury can see from a stack of telephone
11 bills the number of calls and the relationship of the
12 calls, and the only other way we could put that into evidence
13 is have somebody sit on the stand and testify.
14

15 THE COURT: He can say the bills themselves
16 showed so many calls from Vasquez to Wall's, and Wall's
17 to Vasquez, and Myers to Vasquez, and Vasquez to Wall's,
18 and he can do it by dates, if you wish to; to tie it up
19 with the live testimony that calls were made on those
20 dates. But that's all.

21 MR. KENNEY: What we wanted to do is to put this
22 chart in evidence.

23 THE COURT: Well, I'm just saying I'm not going
24 to let you. I will let you do a summary of it, which is
25 mainly a summary of what the bills say. He can do that.
I won't tell the jury that here's a stack of toll bills,

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2 you go through them and you add them up.

3 MR. DIRENZO: If I may, on this point, your
4 Honor: Insofar as they have heard sworn testimony,
5 knowing that the jurors have to determine who made the
6 call, when it was made, and there is evidence of it and
7 supported by the phone company bill, which is in evidence --

8 THE COURT: I will allow him to testify to
9 summarize the numbers made from one to the other each day.
10 Instead of giving a jury a stack of bills and tell them
11 to go through and add them up.

12 MR. DIRENZO: Except that the testimony has
13 been received with reference to calls doesn't necessarily
14 coincide or is it reconcilable with the testimony
15 received, because you will find maybe there were more calls
16 on a date when maybe a witness testified one call was
17 made, and the jury will get the wrong impression.

18 THE COURT: That is not so, because as I gather
19 some of the testimony, calls were made, and the person
20 wasn't in, so either they called back again or there
21 was a return call. But that's for the jury. I think
22 they're entitled to know a summary of what those bills
23 show, day by day, two calls -- Vasquez calling Wall's is
24 a normal thing in the course of the live testimony in this
25 case, and you'd have to really go out into left field to

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2 dream up that somebody in Wall's is unrelated to the
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dramatis personae of this lawsuit, with calling Maria Vasquez, or vice versa. So I will allow a summary of it, but not for the reason you want to give and not put that whole chart in.

MR. DIRENZO: I take it, when your Honor does that, the jury will be instructed that they're to receive this and use any part of it in connection with any testimony they felt they heard, but primarily to establish that calls were made from a certain number and received at Wall's Tavern, or made at Wall's Tavern --

THE COURT: All he's going to say is, and you can do it day by day, and I think your dates go a little too far there, by the way, don't they? Didn't we have a cut-off date earlier?

MR. KENNEY: These calls, your Honor, go up to --

THE WITNESS: May 1st, I believe.

MR. KENNEY: May 1st.

THE WITNESS: May 3rd.

MR. KENNEY: They go up to May 3rd.

THE COURT: I will allow this witness, and he can take the book -- we're going to have a little recess now -- to say on March 22nd, one call, Vasquez to Wall. March 24th, two calls, Vasquez to Wall. Whatever it shows,

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2 as he goes down. Because they have heard dates from these
3 witnesses, as to when calls were made. He's merely summing
4 up what the tolls bills say. But to put it in in this
5 fashion and for the purpose that Mr. Kenney offers it,
6 it's no more probative than the bills themselves.

7 MR. KENNEY: It's an awful lot easier to see.

8 THE COURT: I don't think that helps at all.
9 The number made is merely an addition, a mathematical
10 computation of what appears on the bills, and that's
11 all you can do.

12 MR. KENNEY: All right.

13 THE COURT: We will continue our recess.

14 (Recess.)
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BY MR. KENNEY:

Q Mr. Kievit, would you look at Government's Exhibit 44 for identification and you would give the Court and jury a summary statement of those phone calls which you placed on the chart, starting with the first one.

Would you give us the dates?

A Yes, sir.

On March 22 of this year a phone call was made from Maria Vasquez to Wall's Tavern; on March 23 of this year a phone call was made from Vasquez to Wall's Tavern.

MR. DIRENZO: May I ask that it be characterized as a telephone call from Vasquez's number to the tavern?

A (Continuing) On March 24 there was a call made from Vasquez number to Wall's number. There were two phone calls that day, the 24th.

On March 25th there was one phone call made from Vasquez number to Wall's number.

On March 26th there was a phone call in the morning from Myers' number to Vasquez number. There was one phone call made from Vasquez number to Myers number, and one phone call from Vasquez number to Wall's number.

On March 27 of this year there was one phone call from Vasquez number to Wall's number.

1 And one phone call from Vasquez number to Myers number.

2 On April 1st of this year there were two phone
3 calls from Vasquez number to Myers number, and one from
4 Vasquez number to Wall's number.
5

6 On April 2nd of this year there were three phone
7 calls from Vasquez number to Myers number, and there were
8 two phone calls from Vasquez number to Wall's number, and
9 two phone calls from Wall's number to Vasquez number.

10 On April 3rd of this year there were three
11 phone calls from Vasquez number to Myers number, two
12 phone calls from Vasquez number to Wall's number, and one
13 phone call from Wall's number to Vasquez's number.

14 On April 4th of this year there were five phone
15 calls from Vasquez number to Myers number; two phone calls
16 from Myers number to Vasquez number; and three phone calls
17 from Vasquez number to Wall's number.

18 On April 5th of this year there was one phone
19 call from Wall's number to Myers number.

20 Q Could you tell us what time of day that
21 call was made?

22 A Yes, at 10.56 p.m., sir.

23 On April 6th of this year there was one phone
24 call from Vasquez number to Meyers number, and one phone
25 call from Vasquez number to Wall's number.

On April 5th of this year there was one phone call from Vasquez number to Myers number, and one phone call from Wall's number to Vasquez.

On April 9 there were four phone calls from Vasquez number to Wall's number, and two phone calls from Wall's number to Vasquez number.

On April 7 of this year there was one phone call from Vasquez number to Myers number, two phone calls from Vasquez number to Wall's number, and one call from Wall's number to Vasquez number.

On April 13 of this year --

MR. MARTIN: I am going to object to this.

THE COURT: Overruled.

A (Continuing) On April 13 of this year there were two phone calls from Vasquez number to Myers number, and two phone calls from Vasquez number to Wall's number.

On April 15 of this year there was one phone call from Vasquez number to Myers number, and two phone calls from Vasquez number to Wall's number.

Q Mr. Kievit, were there any calls between Wall's and Maria Vasquez, or vice versa, after April 15, 1973?

MR. DIRENZO: I object.

THE COURT: Overruled.

MR. DIRENZO: I object to it. Your Honor

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Kievit-direct

knows the one ground, subsequent to April 5th. I also object to the form of the question.

THE COURT: Reframe your question.

Q Will you tell us whether there were any telephone calls between Wall's number and the Vasquez number, or the Vasquez number and Wall's number subsequent to April 15, 1973?

A Yes, sir.

MR. DIRENZO: I withdraw the objection as to form.

Q How long does your summary indicate those calls continued?

A From the 15th of April, 1973, through the month of May 3, 1973.

Q Between April 15, 1973, and May 3, 1973, were there any telephone calls from either the Vasquez number or Wall's number to the Myers number?

MR. MARTIN: I am going to object.

THE COURT: Overruled.

A No, sir, there were no calls.

Q Were there any calls from Myers number to Vasquez's number or Wall's number during that period?

A To Myers?

Q From Myers number to Wall's or Vasquez's numbers,

subsequent to April 15, 1973?

A No, sir.

Q Now, Mr. Kievit, directing your attention to November 23, 1973, did you have an occasion on that date to meet with the defendant Vincent McCloskey?

A I did, sir.

Q Do you know him as Mike McCloskey?

A Yes.

Q Did you have a conversation with him at that time?

MR. MARTIN: I am going to object to this, if your Honor please.

THE COURT: On what grounds?

MR. MARTIN: May we approach the bench?

(At the bench.)

MR. MARTIN: If your Honor please, I believe the government represented to me when I appeared in the case there were no written or oral statements or admissions. They certainly were not supplied to me.

THE COURT: You made a motion to suppress those very statements before me on Saturday, December 8, in my chambers.

MR. MARTIN: If your Honor please, I think the government said this was not going to be introduced.

They said it would not be introduced at the trial.

MR. KENNEY: We never said that, and in response to Mr. Martin's question as to whether anything had been said, we told him that we wouldn't discuss the facts of this case, but that Mr. McCloskey had told us that the contents of the mailtruck would be taken to a man named Larry Dalia in Linden, New Jersey, and that he and Tommy Carroll had planned this for more than a year. We told him we intended to elicit that information, with the exception of redacting that portion which relates to the defendant Tommy Carroll. I instructed Mr. Kievit that he is not to mention anything said by this defendant against any other defendants.

THE COURT: You asked me to suppress. We went over the record. There was no basis to suppress. The transcript of that hearing is available to anybody who wants to look at it.

MR. MARTIN: He said there were no written documents, and the United States Attorney represented to me that he questioned him only about incidents outside of this robbery. I have never heard of this before, and, your Honor, this is a total surprise to me. I never heard of it before; it was never produced before; this was the first time I have heard it. It was a written

document I moved to suppress before your Honor. The United States told me that the questioning took place without counsel present.

THE COURT: Wait. Your statement "without counsel present," needs some elaboration, and I refer you to the transcript of the hearing in my chambers on December 8 as to that.

MR. MARTIN: There was nothing about this oral statement. This is the first I heard of it. I never heard of an oral statement or written admission being made. If it was furnished to Mr. Goldberg, it was not to me, and for it to come in at this time is highly prejudicial.

MR. KENNEY: There is no written statement, your Honor. I made no notes at the time. Mr. Kievit has told me he made no notes at the time. However, I asked Mr. Kievit if he had any notes on this conversation, and he told me after he returned to his office some days later he did make some notes. We don't consider those notes to be 3500 material. He has them with him.

Will it be discovery prior to trial?

MR. KENNEY: It certainly would not be.

THE COURT: You don't know what the notes are. I don't know what they are. Where are his notes? Let me

2 see them.

3 MR. KENNEY: (To the witness) Mr. Kievit, may
4 I have the notes that you have?

5 MR. DIRENZO: I ask the jury be excused at
6 this time.

7 THE COURT: I am going to rule right away.

8 MR. DIRENZO: If there is going to be an adverse
9 ruling, I would like to be heard.

10 THE COURT: (To jury) The jury will return to
11 the juryroom for a minute.

12 (Jury excused.)

13 (Proceedings continued in open court.)

14 MR. KENNEY: Your Honor, prior to that Saturday
15 Mr. Martin was fully informed, as was Mr. Carey, his
16 associate, as to exactly what occurred, and they both
17 asked me when he had made any statement, and I told them
18 exactly what I am saying now. We didn't ask him any
19 questions; this was volunteered. I found out in the last
20 day or so Mr. Kievit made notes.

21 THE COURT: I don't think these notes are 3500
22 material.

23 MR. MARTIN: I never heard this from Mr. Kenney
24 if he said it.

25 MR. DIRENZO: I have a distinct recollection

1
2 that on the Friday that we were at your office you told
3 me you had no Bruten problem at all.

4 MR. KENNEY: Correct.

5 THE COURT: This is no Bruten problem.

6 MR. DIRENZO: He is telling me about the
7 statement which would inculcate Myers, which would be
8 redacted. I didn't know what the finished product
9 was going to look like. In any event, after reading the
10 statement it may well be.

11 THE COURT: There is no statement.

12 MR. DIRENZO: The comment that he is going to
13 make. I would like to know exactly what he is going to
14 say.

15 THE COURT: I think it is fair that you do.

16 What is the question you are going to put to the
17 witness?

18 MR. KENNEY: Mr. Kievit, tell us what was said
19 in the conversation between yourself and Mr. McCloskey on
20 November 23, 1973.

21 THE WITNESS: Mr. McCloskey told me that after
22 the hijacking had gone down, if it had been successful,
23 they were going to take the truck over to a small packaging
24 plant in Linden, New Jersey, owned by Larry Dalia. I
25 believe the spelling is D-a-l-i-a. He also said that
he had spoken to Mr. Dalia on at least two prior occasions

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4500

1 to the April 5th hijacking about Mr. Dalia accepting the
2 goods. He also said that Mr. Dalia was expecting a truck
3 in or a shipment to come in to his place of business at
4 Linden. He said he never told Mr. Dalia that it was a
5 mailtruck, and he never told Mr. Dalia what was in the
6 truck. He also said they had been planning the mail job
7 for approximately one year prior to it taking place.

8
9 THE COURT: That is the end, is it not?

10 THE WITNESS: That is correct.

11 THE COURT: That is the end of his testimony.

12 Now, Mr. Direnzo --

13 MR. DIRENZO: Well, No. 1, I would object to it.

14 THE COURT: He says "they." It is not redacted.

15 MR. HAFETZ: I would like to object.

16 MR. KENNEY: We could have him say "I," but that
17 would be out of context.

18 THE COURT: That is exactly what they did in
19 the decision by Judge Mulligan.

20 MR. KENNEY: I have no objection to redacting it
21 to say "I."

22 THE COURT: Then you are changing it?

23 MR. KENNEY: I don't say "they" creates a problem,
24 but we have no problem changing it to "I."

25 THE COURT: That is exactly what they did in
the Vermont case.

1
2 MR. HAFETZ: Is the witness clear on this?

3 THE COURT: I gather that the witness under-
4 stands it is not "they"; it is "I".

5 THE WITNESS: That is correct.

6 MR. MARTIN: May I be heard on the entire thing?

7 THE COURT: Yes. Don't go over what you
8 already put on the record. Everything you said so far has
9 been on the record. Do you want to add anything?

10 MR. MARTIN: I just heard the statement that the
11 witness has given on the stand. It's the first time I heard
12 the statement. I have never been supplied or even made
13 aware of the fact that such a statement was made. The
14 only knowledge I had was a written statement that the
15 defendant was supposed to have signed with the United
16 States Attorney. He showed me this written statement and
17 he said when he was questioned he was questioned solely
18 about matters other than this case, and there were no
19 facts or statements taken regarding this case. In
20 view of that representation, this is a surprise, and I
21 would like to move at this time for a suppression hearing
22 under the circumstances. I think if your Honor changes
23 "they" to "I," it even highlights it and makes it very
24 prejudicial to my client, and I move to suppress under
25 the circumstances. I have never heard this statement

before.

THE COURT: He said he told it to you.

MR. MARTIN: That is not so, your Honor.

Mr. Direnzo was in his chambers on Friday when we met there, and I think your Honor has the record and you can read that record.

MR. DIRENZO: I was not in Mr. Kenney's chambers; I was in his room.

THE COURT: Not yet.

MR. MARTIN: With all due respect, your Honor, I think it's highly inflammatory and prejudicial to the defendant. I have no way of even preparing for this.

THE COURT: You are not entitled to oral admissions in advance of trial?

MR. MARTIN: I am entitled to a motion to suppress.

THE COURT: You made that motion. The record is clear. It was brought out about the warnings to the defendant, the agreement that counsel did not have to be there, and, in fact, he said he didn't want his counsel there, is my recollection.

MR. MARTIN: This is a new statement.

THE COURT: The same thing; the same time period.

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MR. MARTIN: If your Honor reads those minutes in your chambers you are going to find it is not there.

MR. HAFETZ: I have no objection, other than the redaction problem, which seems to be cleared up now, or the Bruten problem that I previously objected to.

MR. HOPPER: I do object, because I really don't think on the facts in this case it can be cleared up. For instance, there has been testimony, No. 1, about knowledge of where the stuff was going.

THE COURT: You have heard live testimony by a fellow named Turner.

MR. HOPPER: Can I hear what he is going to say?

THE COURT: He said he is going to say he made arrangements with Larry for delivery of the truck.

MR. KENNEY: Mr. Kievit would use the word "he," instead of "I." In other words, "he said to me that he would do this, that and the other thing."

THE COURT: It is the same as the Rippy statement.

MR. MARTIN: I am going to object to moving this change to "he," in addition to my other objections.

THE COURT: You object to everything in the trial, why miss this one?

MR. MARTIN: I think it is substantial.

1
2 THE COURT: Let's go on.

3
4 MR. DIRENZO: Before the jury comes in, your
5 Honor has indicated that you will receive this testimony
6 from this witness as already indicated on the record.
7 I will respectfully ask your Honor to advise the jury
8 that in no circumstances is the jury to consider this
9 statement in connection with the conspiracy count or any
10 count in the indictment as against any of the defendants.

11 THE COURT: Yes, I will give them the same
12 instruction I gave them when the Rippy statement came in,
13 which was a post-conspiratorial statement.

14 Let me just check one thing.

15 (Short recess.)
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1 THE COURT: The transcript in my chambers,
2
3 December 8, 1973 at 10:30 a.m., reads as follows:
4
5 "On November 23rd, which was Friday, 1973, Mr. McCloskey
6 was brought to my office" (the "my" referring to Mr.
7 Kenney who is speaking) "without his attorney, pursuant
8 to this agreement, and at that time Mr. Kievit and
9 Mr. Shatzel were present -- they are both United States
10 postal inspectors -- and in accordance with the agreement
11 Mr. McCloskey was questioned with regard to how the
12 contents of the postal truck would be disposed of"

13 So you knew about it at the time of the hearing
14 before me.

15 MR. MARTIN: There wasn't anything about answers
16 on it, your Honor. Will you continue with the reading?

17 THE COURT: "This being in our opinion a
18 separate crime. We were interested in knowing who was
19 going to fence these things, frankly. He gave answers
20 with regard to that."

21 This was said in your presence.

22 MR. MARTIN: He didn't say what was said.

23 THE COURT: He doesn't have to tell you what
24 was said.

25 MR. MARTIN: This was the Saturday before the
trial. I was in the case three days.

1 THE COURT: What has that got to do with it?
2
3 You just made a representation on the record that Mr.
4 Kenney never told you.

5 MR. MARTIN: I said that's the first time I
6 heard that statement. I didn't hear this statement, and
7 Mr. Kenney told me there were no written notes on anything
8 specific when I asked him.

9 THE COURT: We're not talking about --

10 Forget it.

11 Bring the jury back.

12 MR. KENNEY: Your Honor, before the jury comes
13 back, Mr. Kievit is our last scheduled witness. However,
14 in reviewing the record last night, I noticed that
15 Mr. Dexter testified that Rippey told him that Myers had
16 said something to him about the job being --- "didn't go
17 down," I think his language was. We would like to recall
18 Myers simply to ask him on the four occasions during
19 this event that he went back to Washington, did he meet
20 with anyone, because in reviewing Myers' testimony, it
21 appears as if at the end of his testimony, we asked
22 him --

23 THE COURT: Wait. You are talking with only
24 one defense counsel present.

25 MR. KENNEY: I'm sorry. I didn't realize that.

1
2 THE COURT: Bring defense counsel in and the
3 defendants.

4 (Pause.)

5 THE COURT: All right. Mr. Kenney was
6 making an application in your absence, Mr. Durenzo,
7 Mr. Hafetz and Mr. Hopper.

8 Go ahead.

9 MR. KENNEY: Our application is to recall the
10 witness Myers to ask him if on the four occasions prior
11 to April 5, 1973, when he returned to Washington, he
12 met with anyone there, and specifically whether he met
13 with Bobby, the person he testified to on the 19th.
14 The reason for that is because after Myers testified,
15 Dexter testified that Rippy had told him that Myers had
16 told him sometime during this period of time, it's not
17 specified when, that nothing went down, and on reviewing
18 Myers' testimony, he was asked the question, "After
19 you returned to Washington on April 5th, did you see
20 Bobby or anyone else?" And he said no. So that it
21 leaves an ambiguous record as to what his testimony is.

22 THE COURT: It's not ambiguous. It's directly
23 inconsistent.

24 MR. KENNEY: I don't think it's directly
25 inconsistent because it could be argued that on those

occasions he was not asked whether he saw Bobby and perhaps he did.

MR. HAFETZ: I object. The witness has been on, he has finished, cross-examined; to bring him back on --

THE COURT: I agree. He was on hours upon hours upon hours upon hours.

MR. KENNEY: This arose, your Honor, after he left the stand.

THE COURT: You were sitting here during his whole testimony.

MR. KENNEY: I was, but I'm saying Dexter's testimony came in --

THE COURT: I sustain the objection.

All right, bring in the jury panel.

(Jury present.)

THE COURT: You may proceed.

BY MR. KENNEY:

Q Mr. Kievit, directing your attention to November 23, 1973, did you have a conversation on that day with Mike McCloskey?

A Yes, sir, I did.

Q And would you tell us, to the best of your recollection, what he said to you and what you said to

him?

MR. MARTIN: My objection is on the record, your Honor.

THE COURT: Yes, Mr. Martin.

MR. MARTIN: Thank you.

THE COURT: At this point, I want to tell the jury that I am admonishing them in the same way I admonished them when a statement was introduced as to what the defendant Rippey said. What you will hear from this witness now is being offered solely against the defendant Vincent or Mike McCloskey and may not be considered by you in any way in determining the guilt or innocence of any other defendant of any charges in this trial.

I repeat it. It's being introduced solely against the defendant McCloskey and may not be considered by you in relation to any other defendant in this case on any charge in this case.

Go ahead.

Q Tell us what was said in that conversation.

A Yes, sir. He told me that if the hijacking had been successful, the truck would be taken over to Larry Dalia's small packing plant in Linden, New Jersey. He said that he had spoke to Mr. Dalia on at least two

2 prior occasions to the hijacking on April 5th, and that
3 Mr. Dalia had agreed to accept a shipment. He said that
4 Mr. Dalia was expecting the truck but he did not know
5 what kind of truck it was, nor did he know what the
6 truck would contain. He also said that the job had been
7 in progress or had been in the planning stages for at
8 least a year prior to it going down.

9 MR. KENNEY: I have no further questions of
10 this witness, your Honor.

11 THE COURT: Mr. Direnzo.

12 MR. DIRENZO: I have no questions.

13 THE COURT: Mr. Martin.

14 CROSS-EXAMINATION

15 BY MR. MARTIN:

16 Q Mr. Kievit, you are the agent in charge of
17 assembling this case, is that correct?

18 A Let me qualify that, sir. There were two of
19 us but I have been handling the case most of the way,
20 yes, sir.

21 Q And you are the packager?

22 A You could say that, sir, yes.

23 Q And you line up the witnesses and help the
24 United States Attorney in getting the facts and people
25 together for presentation of the case?

2 A I have, sir.

3 Q And how long have you been working on the case?

4 A Since April 5, 1973, sir.

5 Q Now, you testified about some telephone conver-
6 sations, I believe, or telephone calls -- I'm sorry --
7 you testified about some telephone calls emanating from
8 a woman's phone, Maria Vasquez to Wall's, to Washington;
9 is that correct?

10 A That's correct, sir.

11 Q Now, in your assembling and packaging of the
12 case, did you have occasion to obtain the records for
13 Chester Crawford's home telephone number?

14 A Yes, sir.

15 Q And do you have that with you in Court?

16 A I do not have it myself, sir.

17 Q And during the course of the packaging your
18 case, did you have occasion to examine the records of
19 Paul Crawford's telephone?

20 A No, sir.

21 Q Did you attempt to?

22 A Yes, sir.

23 Q Did you, in fact, examine them?

24 A No, sir.

25 Q During the course of your investigation, did

2 you have occasion to ascertain whether or not Geoffrey
3 Mann had a telephone?

4 A Will you repeat the question, sir?

5 MR. MARTIN: May I have it read back, if your
6 Honor please?

7 (Record read.)

8 A He did not have a telephone of his own, sir.

9 Q Do you know where he was living?

10 A Two different addresses, sir.

11 Q During the period March 20th until April 5th
12 did you know where he was living?

13 A No, sir.

14 Q Did your investigation disclose where he was
15 living during this period of time?

16 A At two different addresses, sir.

17 Q And can you tell me those addresses?

18 A He lived with his mother on and off during
19 that period of time. I don't recall the address in
20 Washington, sir.

5B

Q Did you attempt to obtain the telephone number of the mother in Washington?

A Yes, sir.

Q Did you in fact obtain that telephone number?

A We did, sir.

Q Did you in fact obtain the telephone records?

A Yes, sir.

Q Do you have them with you in court?

A Not in person. I don't have them personally, sir.

MR. KENNEY: Your Honor, we are willing to supply any of these records we have in our possession to Mr. Martin. I think we have made that clear.

Q Isn't it a fact, Mr. Kievit, that you acquired information from Jack Turner about Larry Dalia?

A That is correct, sir.

Q And isn't it a fact, Mr. Kievit, that Jack Turner told you that Larry Dalia was expecting some merchandise but he didn't know what it was?

A He told me that Larry Dalia was expecting merchandise, but I don't recall if he ever told me that he didn't know what it was, sir.

MR. MARTIN: Can I have the Turner statement?

MR. KENNEY: Exhibit 43 for identification.

MR. MARTIN: May I have a moment, your Honor?

(Pause.)

Q Mr. Kievit, were you present when the statement, Government's Exhibit No. 43 in evidence, made by Mr. Turner --

THE COURT: That is for identification.

Q -- dated June 20, 1973 --

THE COURT: Exhibit 43 for identification. It is not in evidence.

MR. MARTIN: I am sorry, your Honor.

Q Were you present when that statement was made?

A Who made the statement, sir?

THE COURT: Come up and show it to him.

Q The statement was made by John Turner.

A Yes, sir, I was present.

Q And did you hear this question and answer or these questions and answers:

"Shatzel:" -- this was your associate, Postal Inspector Shatzel?

A That's correct.

Q "Who were you to meet there?

"Turner: The man who operates the packaging business there."

Then there is a continuation.

On page 5:

"Shatzel: Do you know Larry's last name?

"Turner: No, I don't.

"Kievit: Can you describe Larry?

"Turner: Yes. Approximately 6 foot 2, 175 pounds, white male, grayish-black hair, a fair complexion, and age is approximately 42 to 45.

"Shatzel: You mentioned Larry and a packaging plant.

"Turner: Yes.

"Shatzel: Does Larry own the packaging plant?"

THE COURT: What difference does that make? There is nothing inconsistent with anything the witness said.

Go to the question you are really interested in.

Q You got that information from Turner on June 20th, did you not?

A If that is what is in that statement, yes, sir, we did.

Q In your summarization of the telephone calls made from the Vasquez number between the period April 1st and April 4th, would you agree that there were 13 telephone calls made from the Vasquez number to the Myers number?

A I would have to see the chart, sir. I don't remember.

Between when and when, sir?

Q Between April 1 and April 4.

A Vasquez to Myers?

Q Vasquez in Queens to Myers, Terry Myers, in Washington.

A Between the 1st and 4th?

Q Between April 1, 1973, and April 4, 1973, from Vasquez, 276 6220, in New York, to Terry Myers, 829 7657 in Washington.

A From April 1st through the 4th, inclusive of the 4th, yes, sir, there were 13 phone calls, that's correct.

Q Now, there were also three other calls made from the Vasquez number to Washington during that period of time, were there not?

A Three other calls to what number, sir?

Q To a Washington number, No. 562 2366 is one number, No. 583 2644 is another number; the number 583 -- I am sorry, that is again 583 2644, in the Washington area. Is that correct?

A I don't have it in this chart, sir. I don't have it here.

Q Can I show you this to see if this refreshes your recollection?

A May I see the telephone records for that date?

1
2 Q Sure.

3 Did you investigate those calls?

4 A I didn't make a summary of them, sir, no.

5 Q Do you know to whom they were made?

6 A I would have to look at the telephone bills,
7 sir, to be absolutely sure who those numbers belong to.

8 Q And will you look at them, please?

9 A I don't have those bills present here, sir.

10 Q Incidentally, in your investigation, did you
11 ever ascertain the calibre of the bullet that killed
12 the mail guard?

13 A Yes, sir, I believe it was a .38 calibre.

14 Q Did you ever find the bullet?

15 A Yes, sir, I believe it was located in the back
16 of his seat, behind the driver.

17 Q And what did you do with it?

18 A It was sent to our laboratory, sir, for analysis.

19 Q Did you get a laboratory report on it?

20 A Yes, sir, we did.

21 MR. KENNEY: Mr. Martin has a copy of this
22 report.

23 THE COURT: Do you have the report, Mr. Martin?

24 MR. MARTIN: No further questions.

25 THE COURT: Mr. Hafetz.

CROSS EXAMINATION

BY MR. HAFETZ:

Q Mr. Kievit, Mr. Martin asked you about three phone calls to Washington from the Vasquez number. Those were calls to, one was to 202 562 2366; one was to 202 583 2644; and the other one was to 202 583 2644. Two numbers, actually. Two to the same number.

A Yes, sir.

Q Do you say you have some records that show you who the subscriber was to those three Washington numbers?

A Yes, sir, I believe we do. I believe they are in that group of records there, sir.

Q Would you consult those records, please?

THE COURT: You can step down.

(Pause.)

THE COURT: Can you answer his question?

THE WITNESS: Yes, sir. Repeat that first number again, sir.

Q I asked you, do you have the records that would show you who the subscribers were to those numbers, three calls, but two numbers, actually.

A The one number I believe, sir, was --

Q I am just asking you if you have the records that show it. That is my first question.

THE COURT: Do you have the record?

A I have the record of one of them, sir. I am not sure of the second you gave me.

Q Which one do you have the number for?

A Area Code 202 583 2644.

Q Okay. Was Robert Rippy the subscriber to that number?

A No, sir.

Q And the other number you have is 562 2366. Check your records.

A I don't have that one here, sir.

Q You don't have that with you?

A No, sir, it is not here. I can't find it in these records.

Q Isn't it correct that that is not Robert Rippy's telephone number?

A I can't say, sir. I don't have it here.

Q Do you have some records that would ascertain it for you?

A There is 2366, sir, 562?

Q That's right.

A It's number belongs to a --

Q I am not asking who it belongs to. I am asking if that number -- if Robert Rippy is the subscriber to

that number.

A No, sir.

MR. HAFETZ: I have no further questions.

THE COURT: Mr. Hopper.

MR. HOPPER: I have none.

THE COURT: Any redirect?

MR. KENNEY: Just one question.

REDIRECT EXAMINATION

BY MR. KENNEY:

Q Can you tell us, Mr. Kievit, between April 1st and April 4th, 1973, how many calls, if any, there were from Vasquez to Wall's Tavern?

A From April 1st through April 15th, 1973, there were 14 calls made from Vasquez number to Wall's number.

Q Was that from the 1st to the 15th?

A 1st through, including the 15th.

MR. KENNEY: All right. I have no further questions.

THE COURT: You may step down.

MR. MARTIN: May I just ask one question?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. MARTIN:

Q Between the 1st and the 4th of April, how many

calls were there from Vasquez to Wall's?

A From the 1st inclusive of the 4th there were seven.

Q Excuse me?

A From the 1st, inclusive of the 4th of April, there were seven phone calls, sir.

MR. MARTIN: Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KENNEY: The government rests.

THE COURT: The jury may retire to the juryroom while we find out what the next step will be.

(Jury left the courtroom.)

THE COURT: Mr. Drenzo, motions.

MR. DIRENZO: If your Honor please, there has been a number of incidents where evidence has been received or taken subject to connection and I had hoped that we could have had each of the instances where it was taken subject to connection so that the motions could be made.

THE COURT: Well, I will make a ruling now, that all of the evidence taken subject to connection is now admissible in this case, except a statement as to Rippy which is admissible solely as to defendant Rippy.

1 and the last testimony by Kievit, admissible solely as to
2 the defendant McCloskey.

3
4 MR. DIRENZO: Now, if your Honor please, I
5 can direct my motion to the indictment.

6 I now move, pursuant to Rule 29(a), for an
7 order directing the entry of a judgment of acquittal
8 as to each of the counts in the indictment, in that the
9 evidence is insufficient to sustain a conviction on each
10 of the separate, specific counts.

11 THE COURT: The motion is denied.

12 Mr. Martin.

13 MR. MARTIN: I join in Mr. Drenzo's motion.

14 THE COURT: Motion is denied.

15 Mr. Hafetz.

16 MR. HAFETZ: I make the same motion, Judge, and
17 if I may be heard on it --

18 THE COURT: Obviously.

19 MR. HAFETZ: Addressing myself first to count 1,
20 I submit that under the line of decisions in this circuit,
21 specifically the Crimmins case, the recent Alsondo case,
22 both of the recent Alsondo cases, the government has failed
23 to prove --

24 THE COURT: You left one out -- and the De Marco
25 case of last week.

jkg

MR. HAFETZ: And the De Marco case of last week. The government has failed to prove a crucial element of the conspiracy charged, namely, knowledge by my client at a time when he allegedly participated in a conspiracy of the anti-federal element, that is, that it was a mail-truck involved.

The only testimony that he had knowledge that there was a mailtruck was after he had done everything he had done, assuming arguendo that could amount to participation in a conspiracy, and that was some time around March 25th when Paul Crawford returned and indicated that in New York there had been a mailtruck robbery discussed.

Specifically with regard to that retroactively acquired knowledge, after the participation, I submit that the conspiracy that we are talking about is a specific, a federal conspiracy, and defendant can't be liable to any conspiracy. The conspiracy that this Court is concerned with is an anti-federal conspiracy, and as far as defendant Rippey knew it was not until March 26th that he had knowledge that there was a conspiracy that this Court would have jurisdiction of, and at that point he did absolutely nothing to indicate participation, nothing to further the conspiracy.

There are several points involved here. With

1
2 regard to the statement by Paul Crawford at that point,
3 the one and only statement in the whole record which
4 indicates any knowledge of post office robbery being planned
5 I would submit that that statement in itself is not even
6 admissible. It is not in furtherance of the conspiracy.
7 It is a narrative declaration of past recitation of
8 an event that took place in New York.

9 In no way does that constitute a furtherance
10 of the conspiracy, and I would ask that that statement
11 itself be stricken.

12 I would submit that it is not in furtherance
13 of the conspiracy, and it should not be admissible as
14 far as the defendant Rippy.

15 In that regard, as to narrative declarations --

16 THE COURT: Are you through on count 1?

17 MR. HAFETZ: No.

18 It is in regard to Paul Crawford's statement.
19 The only possible argument that I see the government making,
20 to keep Rippy in the conspiracy, with regard to this anti-
21 federal element, is the statement by Dexter that Rippy
22 said he was expecting something.

23 I submit that this statement itself is totally
24 contradicted by the live witnesses. In effect, it is a
25 washout, a zero, because the live witnesses never testified

that such a statement was made.

I submit furthermore that the mere statement, assuming arguendo that the jury could credit it, the mere fact that the statement was made when Rippy first acquired knowledge of what the conspiracy was, does not indicate participation in it.

The fact that he had earlier made a statement retroactively learned that it was a federal conspiracy and then made no statement does not indicate his participation in the federal conspiracy.

Paul Crawford told him at that point that Paul Crawford was not going back and not participating. And for Rippy at that point -- there was no necessity for Rippy to do anything at that point.

I am not arguing here a withdrawal. I am arguing here a lack of Rippy's assent and participation in the federal conspiracy.

I would submit furthermore, in regard to count 1, that if, assuming arguendo, there was enough evidence to show an agreement by Rippy to rob, based on the events of March the 19th, that that did not encompass within its scope a series of robberies.

While the events of March 19th through the 26th had faulted, there was one completed robbery and one

attempted robbery in Pennsylvania.

I submit that if Rippy agreed at all, if he could be tied in on agreement on March the 19th, it didn't encompass anything more than a one-shot deal.

The government did not establish evidence beyond a reasonable doubt that Rippy was part of a venture that included a series of robberies so that when he later learned of a post office robbery, which, in fact, was consummated on the 5th, learned of it on the 26th, learned of it on April 5th, what he had originally agreed to originally, if that can be held to be agreed, to tie him in, was not to a series of three robberies.

I submit additionally that if the fact that tying a man in on a conspiracy is apparently the statement that he made to Dexter -- and that is the only basis for tying Rippy in to a federal conspiracy, if he is to be tied in at all -- this is the only proof, then, of Rippy participating in a federal conspiracy, once he learned that it was a federal conspiracy, and I think that is when the clock would run, and whether the man joins or not, that at that point we really have no corpus of the crime. We have only an admission. We have no live witness to say, agreement told to Rippy, federal crime, Rippy agreeing to join in and participate.

1 We have only a statement, the clock now running
2 from March the 26th, an admission by the defendant, but
3 no body of the crime.
4

5 All the prior events do not go to establish
6 participation in the federal crime which Rippy first
7 learned of on March the 26th.

8 So I submit for these reasons that the govern-
9 ment's case fails on count 1.

10 THE COURT: Mr. Kenney.

11 MR. KENNEY: We think, your Honor, that the
12 evidence against Rippy, as against all of the defendants,
13 is sufficient --

14 THE COURT: Just address yourself to Rippy on
15 knowledge of a federal offense under Crimmins.

16 MR. KENNEY: -- sufficient for the case to go to
17 the jury.

18 Paul Crawford testified that on March 23rd he
19 returned to Washington and he told Mr. Rippy that the
20 people he had gone to New York with and the people he had
21 met through Mr. Rippy had planned the hijacking and were
22 planning to hijack a mailtruck, and that he didn't want any
23 part of it.

24 The withdrawal of Paul Crawford from the con-
25 spiracy did not affect, and Mr. Rippy knew that it would

1 not affect the on-going nature of the crime since it was
2 Terry Myers, in fact, who he had sent to see Chester
3 Crawford and not Paul Crawford. He merely went along as
4 a messenger to show Myers where Chester Crawford was,
5 and to assist.
6

7 But the new face, we submit, was in fact
8 Terry Myers. There were not, and I don't think that the
9 evidence would support the theory that Rippy did expect
10 a series of robberies here. Rippy's statements to the
11 postal inspector after the crime was committed indicated
12 that he expected a robbery of three or four hundred thousand
13 dollars. Certainly the robbery of Di Giorgio in Secaucus
14 doesn't amount to anything or approach anything of that
15 size.
16

17 Again, we submit that the robbery in Secaucus
18 with regard to the crime on trial here was merely a test
19 or an exam, really, for Myers and Mann to pass. But
20 Rippy's own statement indicates that he was not expecting
21 that robbery, he was expecting something much larger, and
22 indeed, I think that Dexter testified that in the con-
23 versation that he heard with Rippy, Rippy said he was
24 expecting a hijacking of a truck. That, too, would
25 exclude the Secaucus robbery.

The testimony has been that there were no other

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1 robberies discussed with Myers and Mann in New York,
2 and we submit, your Honor, that the facts, unlike
3 Crimmins, Alsondo and De Marco, are here that the
4 defendant had knowledge, before the crime was committed,
5 that it was to be a robbery of a mailtruck, and to withdraw
6 or end the conspiracy for himself he would have been re-
7 quired to have notified either Myers or Crawford.
8

9 THE COURT: Motion to dismiss count 1 is
10 granted.

11 What about counts 2 and 3?

12 MR. HAFETZ: With regard to those counts, your
13 Honor, under the Alsondo decisions, but first specifically
14 to the Court's apparent sustaining of the substantive
15 counts while dismissing the conspiracy count on the grounds
16 that there they charged a conspiracy to rob and the
17 defendants, while they didn't know the anti-federal element,
18 the federal officer element, knew certainly of the con-
19 spiracy to rob, and so they could be held liable on the
20 substantive count.

21 I think the present case is distinguished,
22 defendant Rippy is distinguished on two bases from the
23 defendants in the Alsondo case. I think, first, the
24 evidence itself, both on sufficiency and weight, does
25 not establish beyond a reasonable doubt that Rippy had

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knowledge of robbery of a truck. Neither Paul Crawford, Chester Crawford, nor Terry Myers, the only three defendants, assuming Myers was talking about Rippy when he said Bobby, none of those three, at no point, any place in the testimony, talk about -- talking now about March 19th, March 20th -- talk about Rippy knowing of a robbery of a truck.

THE COURT: What about Mr. Rippy's own statement?

MR. HAFETZ: The statement itself does conceivably, and Dexter's testimony say that, but I submit that there is total contradiction between the witnesses, and it is more than just a jury question of credibility. I think it is one the Court can take cognizance of as being totally against the weight of the evidence, where three live witnesses did not testify to that crucial fact.

THE COURT: That is not inconsistent with it. He just said -- somebody said he knew -- I think it was Terry Myers -- that he knew they were going to be engaged in a crime. Somebody else said he wanted them to do a job; his own admission that they were going to hijack a truck, put together, are not inconsistent.

Motion is denied as to counts 2 and 3.

MR. HAFETZ: Judge, on that, the other argument,

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2 in regard to the aiding and abetting, the substantive counts,
3 I would argue also that on grounds of remoteness -- I
4 understand that in time and in place a defendant who
5 is not there can be held as an aider and abetter. Of
6 course, in Alsondo, the defendants all were there.
7 Although those facts aren't necessary to uphold the
8 substantive count, I submit that there is an element of
9 remoteness in regard to the defendant Rippy in regard
10 to him really not knowing what was planned, and at the time
11 that he participated in the crime, and the crime took
12 shape, once the people came from Washington and learned
13 what it was going to be, and I would submit that whatever
14 participation Rippy might have had, whatever the testimony
15 is, the 19th and 20th, is too remote as to make him an
16 aider and abetter.

17 THE COURT: The motion is denied as to counts 2
18 and 3, Mr. Hafetz.

19 Mr. Hopper.

20 MR. HOPPER: I join in the same motions made
21 by Mr. Direnzo.

22 THE COURT: Motion is denied.

23 Mr. Direnzo, are you ready to proceed?

24 MR. DIRENZO: I am.

25 THE COURT: All right. Bring the jury back.

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2 MR. MARTIN: If your Honor please, before you
3 bring the jury back --

4 THE COURT: Yes?

5 MR. MARTIN: If we might, may we have a moment
6 to consult with our defendants?

7 THE COURT: You may, if you wish.

8 MR. HOPPER: I would like to.

9 MR. MARTIN: Just one moment.

10 THE COURT: All right. We will take a five-
11 minute recess.

12 MR. MARTIN: Your Honor, may I bring the defendant
13 back here in the courtroom?

14 THE COURT: I say, we will take a five-minute
15 recess.

16 (Recess.)
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(In the robing room.)

MR. DIRENZO: Your Honor, frankly, I think we can do this off the record, if you will permit us.

THE COURT: Put it on the record.

MR. DIRENZO: Frankly, I am going to rest. I think each of the defendants are going to rest. The only problem we seem to have is that one of the attorneys wants to make an application to the Court. You may grant it or you may deny it. The specific request will be that the jury be permitted to visit the scene of the crime.

Now, assuming that your Honor grants that application, that motion, the next question is, will your Honor consider that that constitutes the defendants putting in a defense, and then you will marshal the evidence?

THE COURT: You asked me last night not to marshal the evidence.

MR. DIRENZO: You said you would not. You said if we don't put in a defense you would not marshal the evidence. If you granted this application, you would not marshal the evidence, because it has nothing to do with the testimony as such.

THE COURT: Besides, viewing the scene of the crime now, seven or eight months later, I don't know what

changes have been made in the area.

You are going to rest?

MR. DIRENZO: I am.

MR. MARTIN: I am going to rest, your Honor.

MR. HAFETZ: I am going to rest.

MR. HOPPER: I am going to rest.

THE COURT: Who is making the application to visit the scene of the crime?

MR. HOPPER: Not the entire route, your Honor. I am interested in Peck Slip and South Street.

THE COURT: That motion is denied.

MR. DIRENZO: The next question is, how do we handle the summations?

THE COURT: Here is the way it seems to me, and let me throw it out for discussion: if we started summations tomorrow and ended tomorrow, then I would have to charge the jury Monday, with the possibility of a locked-up Christmas, which we cannot do. If I were to ask them to come in Saturday, that would kill the weekend. I can't do that.

I would suggest -- and you can go out and talk some more about this -- that the defendants William McCloskey, Rippy and Vincent McCloskey sum up tomorrow, and let the jury go in the afternoon, and that you and the government sum up Monday morning.

We would let the jury go Monday afternoon for Christmas, and I will charge them the first thing Wednesday morning.

MR. HAFETZ: May we talk amongst ourselves?

THE COURT: Yes. That is the only suggestion I can think of.

MR. HOPPER: I like your Honor's original statement about summing up on Monday.

THE COURT: Everybody on Monday? I wish you would talk about this, because I know Judge Bauman has the Chesimard matter on, and he is bringing them in Monday.

MR. HAFETZ: I thought the building was going to be closed.

THE COURT: We have arranged for it to be open. We will be sitting in Room 110. There is an annex there and there will be heat. Judge Bauman will be in Room 318. Why don't you go out and talk about it.

(Recess.)

MR. DIRENZO: I understand the United States Attorney wants to make an application.

MR. KENNEY: I have given this some thought and have talked to some men in the office. We feel and make this application, that the best thing to do would be to simply adjourn to 10 o'clock Wednesday morning.

1
2 THE COURT: I won't let this case go from Thursday
3 night to Wednesday morning.

4 MR. KENNEY: We feel, your Honor, that the case
5 has been a repetition of facts, and, two, it is going to be
6 prejudicial -- I don't know which way -- to have a summing
7 up in any order and then have Christmas Day off and then
8 come back and have the charge.

9 THE COURT: Well, I am going to do it that way.
10 You make up your mind, do you want to split it or do it all
11 on Monday?

12 MR. HAFETZ: Not all of us agree.

13 THE COURT: I can't impose any order on you.

14 MR. HAFETZ: Make it that we go over to Monday,
15 have all summations on Monday and charge on Wednesday.

16 MR. HOPPER: I am for that.

17 MR. MARTIN: It is my feeling that if the five
18 of us sum up on Monday, it's going to be a terrible chore
19 for the jury. I would like to sum up tomorrow, possibly
20 two or three of us, so that we can split it, in other words,
21 leave a little earlier tomorrow and leave a little early
22 Monday; there would be less pressure.

23 THE COURT: I think that is better from the
24 jury's point of view, myself.

25 How do you feel about it, Mr. Dizenso?

1 up

2 MR. DIRENZO: It is agreeable to me.

3 MR. KENNEY: Would your Honor be open to the
4 suggestion that some of us sum up on Monday and some on
5 Wednesday?

6 THE COURT: No.

7 MR. HOPPER: I certainly have no objection if
8 Mr. Martin wants to sum up tomorrow, or if anyone else wants
9 to sum up tomorrow, but I would prefer to sum up on Monday.
10 There is a lengthy record here. I have not had a copy of
11 it.

12 THE COURT: Wait. I ordered two copies to be
13 split.

14 MR. HOPPER: I have been going over it, but
15 I would like to go over that entire record.

16 THE COURT: You have not looked at it?

17 MR. HOPPER: Of course I have, but I want to
18 work on it tonight. If I have until Monday, I think I
19 can really have some benefit.

20 MR. HAFETZ: I have no objection to Mr. Martin
21 summing up tomorrow.

22 THE COURT: I think we will start 9.30 Monday
23 morning and we will through by 4.30.

24 MR. MARTIN: We have different positions in it.
25 I am not going into Mr. Carroll's end of the transaction

at all, or Mr. Rippy's or Mr. Billy McCloskey's. I think on a factual or overall basis I probably would have the bulk of it.

MR. DIRENZO: The thing that concerns me is, although we can put in five summations in one day, in the normal course of events I still think it is too trying on a jury. But let's assume it can be done. But the fact is that we are doing it on Christmas Eve.

MR. KENNEY: I join in that, because I am going to be the fellow who is going to be keeping the jury here at 4 or 5 o'clock Christmas Eve.

THE COURT: I will tell the jury the only way we can handle it is in this manner.

MR. DIRENZO: If we split it up, if we had two summations tomorrow, and Mr. Martin is looking for a little extra time, it will be a little easier on the jury.

THE COURT: Will one of you fellows do it tomorrow?

MR. HAFETZ: I would be opposed to that.

MR. DIRENZO: Even if three of us summed up on Monday, it wouldn't take that much time, and two of them would be out of the way. Maybe Mr. Martin could take a little more time tomorrow, if your Honor would grant it.

THE COURT: Suppose we come in tomorrow and spend

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2 an hour and a half, that would mean that the jury would
3 come in at 10 and leave at 11.30? Is that what you are
4 telling me to do?

5 MR. DIKENZO: I am toying with the idea that
6 there will be one or two more in addition.

7 THE COURT: Either Mr. Hopper or Mr. Hafetz.

8 MR. HAFETZ: Even if we start earlier Monday,
9 9 o'clock?

10 THE COURT: You will never get the jurors here.
11 9.30 you can do it.

12 MR. HAFETZ: I don't see how we are going to go
13 that long.

14 THE COURT: You are talking about 45 minutes
15 and Mr. Hopper 45; Mr. Martin is speaking of an hour and
16 a half, and Mr. Dizenzo is an hour and a half, and Mr.
17 Kenney is an hour and a half. If you add that up, that is
18 six hours.

19 MR. HAFETZ: What time do we get out, with an
20 hour for lunch?

21 THE COURT: 4.30.

22 MR. HOPPER: I can even cut down some minutes;
23 I will try.

24 MR. DIZENZO: That is without recesses.

25 THE COURT: That is without recesses, either

1
2 morning or afternoon recesses.

3 MR. KENNEY: I don't want to seem persistent,
4 but I would urge the Court to move it over until after
5 Christmas; it is an extremely important case for the
6 government, and I will be summing up to a jury that I
7 submit isn't going to be paying attention.

8 THE COURT: You will be summing up by 3 o'clock.
9 If we put it over until after Christmas, the summations
10 will take all day Wednesday, again there would be the
11 same argument of six hours of summation, so then you go
12 over to Thursday, and I charge on Friday, and you will
13 have to lock them up on Saturday. You can't do that.

14 MR. KENNEY: The charge will be Thursday morning,
15 and they would have Thursday and Friday.

16 THE COURT: The argument has been made about five
17 or six hours' summation being too long.

18 MR. KENNEY: I don't mind that; I mind it
19 because it is Christmas Eve.

20 The government is going to be summing up when
21 everyone else is going home, and it is going to be pre-
22 judicial. I doubt very much we will get to the jury much
23 before 4 o'clock.

24 THE COURT: I am going to do this: summations
25 tomorrow by Mr. Hafetz and Mr. Martin, and summations Monday

by Mr. Hopper, Mr. Direnzo and Mr. Kenney.

MR. HAFETZ: Judge, can I just have a minute to confer? Can we go outside for just a minute.

(Recess.)

MR. HAFETZ: Judge, we have done some re-thinking. I would like to again suggest Monday. I will shorten my time. I think Mr. Hopper might also. I understand Mr. Direnzo is talking about an hour and 15 minutes.

MR. DIRENZO: I will try to squeeze it in.

THE COURT: Do you want to make it 30 minutes?

MR. HAFETZ: 35.

MR. HOPPER: I will go 35.

THE COURT: That is 70, and Mr. Martin, an hour and 15 minutes?

MR. MARTIN: Your Honor, I have a lot of territory; could I have an hour and a half?

THE COURT: No, take the record home over the weekend.

MR. MARTIN: I have been working on it. On that basis, I will do it all on Monday.

MR. HAFETZ: Will we get a warning when our time is nearly up?

THE COURT: Yes.

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2 MR. MARTIN: May I note my objection to this?

3 THE COURT: Sure.

4 (Proceedings continued in the courtroom with
5 the jury present.)

6 THE COURT: Mr. Direnzo?

7 MR. DIRENZO: If your Honor please, the defendant
8 Carroll rests.

9 THE COURT: Mr. Martin?

10 MR. MARTIN: The defendant Vincent McCloskey
11 rests.

12 THE COURT: Mr. Hafetz?

13 MR. HAFETZ: The defendant Rippy rests.

14 THE COURT: Mr. Hopper?

15 MR. HOPPER: The defendant William McCloskey
16 rests.

17 THE COURT: Ladies and gentlemen, that means the
18 trial is over, except for summations and charge. We have
19 discussed the pros and cons because of the holiday coming
20 up, and the only way that we can work it out is to let
21 you have tomorrow off, but you would have to come in
22 Monday at 9.30 to hear summations, and we would hope that
23 you will be out of here before 4, if not 3.30. I will
24 charge you on Wednesday morning. That is the only way
25 we can do it. So you are excused for tomorrow. The

1
2 reason we do it this way, if we had you come in tomorrow
3 we might have to be here Christmas, and we don't want
4 that to happen; we don't want to have you here over
5 Saturday and Sunday, so it gets a little stretched out.
6 You better here Monday, 9.30, please, so you can get out
7 early. Let's be here on time.

8 One thing else, we will be in Room 110 on
9 Monday; it is on the main floor.

10 MR. DIRENZO: The admonition, if your Honor
11 please.

12 THE COURT: And since we are not going to see
13 you for three days, over a long weekend, I must admonish
14 you, please, don't discuss this case with anyone; neither
15 you initiate nor have anybody initiate with you; don't read
16 the newspapers; if you are anywhere near some article that
17 you think may be about this case, skip it. Have a good
18 weekend. See you Monday, Room 110, at 9.30. It is on
19 the ground floor. When you walk up the steps, you come
20 to where the guards are, you turn sharply to your left and
21 walk around. That is Room 110.

22 Thank you.

23 ALTERNATE JUROR NO. 1: Do I have to be here?

24 THE COURT: Both alternates have to be here.

25 (Jury excused.)

1 THE COURT: I have to rule on requests to charge.
2 I can rule on them now, or, if you want to, come in some
3 time tomorrow. The defendants need not be here. I would
4 rather not wait until Monday morning and have you here at
5 9 o'clock to start. So you tell me, do you want me to
6 rule on them now or would you rather come in some time
7 during the day tomorrow?
8

9 MR. MARTIN: Tomorrow would be fine with me.

10 THE COURT: Of course, I don't have all the
11 requests.

12 MR. DIRENZO: You are right, your Honor.

13 MR. HAFETZ: I have got to give mine to Mr.
14 Kenney.

15 THE COURT: I think you better come in some time
16 during the day tomorrow. What time? Before lunch? After
17 lunch?

18 When will I see your requests, Mr. Direnzo?

19 MR. DIRENZO: You are right. I was going to
20 correct them, because I told you the state they were in,
21 not in a state that I would like to present them to the
22 Court. Hopefully, I can get them to you by tomorrow.

23 THE COURT: If you can get them to me by 11
24 o'clock, we will make the conference after lunch, 2.30
25 in this courtroom tomorrow. I need your requests to charge

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2 by 11 o'clock.

3 You have asked me to read Mr. Johnson's and
4 Mr. Turner's presentence reports. I have read them.
5 There is nothing in them that calls for me to turn them
6 over to you.

7 (Whereupon, an adjournment was taken to
8 December 21, 1973, at 2.30 o'clock p.m.)
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WITNESS INDEX

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<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jerrold Schwartz	1470	1472		
John Turner (Resumed)		1473 1544	1589	
Alexander Baktis	1541	1543		
Kenneth J. Kievit	1556	1625	1635	165

EXHIBIT INDEX

<u>Defendant</u>	<u>Identification</u>	<u>In Evidence</u>
Vincent McCloskey		

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1480

2 UNITED STATES OF AMERICA

3 v.

73 Cr. 855

4 THOMAS JOSEPH CARROLL, et al.

5
6 December 21, 1973
2:30 p.m.

7 (In open court; jury not present.)

8 (Government's Exhibit No. 45 marked for iden-
9 tification.)

10 THE COURT: What is that?

11 MR. KENNEY: Government's Exhibit 45, your
12 Honor, is a list of all the 3500 exhibits which have
13 been turned over, and with the exception of two grand
14 jury testimonies by Mr. Kievit which Mr. Martin would
15 like to see, all four defense counsel agree that these
16 have all been turned over.

17 We should like to make this part of the record
18 rather than read in each item, since there are about
19 40 or 45 of them.

20 THE COURT: All right.

21 MR. MARTIN: If your Honor please, may I comment
22 on that?

23 THE COURT: Yes.

24 MR. MARTIN: There were Items 40, 41 and 42 dealing
25 with Mr. Kievit's report, and I believe some grand jury

1 testimony. I didn't receive copies of that 3500
2 material before Mr. Kievit testified. I haven't received
3 it up till now.

4 THE COURT: Do you want to look at it?

5 MR. MARTIN: Now I don't know whether it would
6 do any good. The witness is off the stand.

7 MR. KENNEY: This has all been turned over.
8 It's just that Mr. Martin doesn't recall it.

9 THE COURT: Mr. Kenney says he turned it
10 over to you.

11 MR. KENNEY: We turned this whole list over
12 in advance of trial, and Mr. Carey went through each
13 page to make sure everything on this list was in each
14 package.

15 MR. MARTIN: I received a package of this
16 material from Mr. Kenney on the first day of trial in
17 this courtroom, if your Honor please, and I did not
18 receive that Kievit material.

19 THE COURT: He's saying, Mr. Kenney, that the
20 package you gave him did not contain this material.

21 Did you get it, Mr. Direnzo?

22 MR. KENNEY: Could Mr. Carey be heard?

23 MR. CAREY: I assembled the 3500 material and
24 made one folder up for each defense counsel, including
25

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Mr. Martin. My best recollection is that I included every document on our list.

MR. MARTIN: If your Honor please, may we ask the other defense counsel, have they seen that 3500 material?

THE COURT: Mr. Dierenzo?

MR. DIRENZO: Your Honor, I will state this to you, that I don't have all of the 3500 material with me. My first impression would have to be, without being positive about it, that I did, but I'm not going to say definitely.

THE COURT: Mr. Hafetz?

MR. HAFETZ: I don't recall, your Honor. I don't have my 3500 material with me. I know I got Mr. Kievit's report as the case agent, a letter with some material attached to it, but I really don't recall whether I got grand jury material.

THE COURT: Mr. Hopper?

MR. HOPPER: I received it.

THE COURT: All right.

MR. DIRENZO: Do you have it now?

MR. KENNEY: I don't have it with me. I will get out the Kievit material and show it to each defense counsel and when we come in on Monday to sum up, we can

1 cover that. But with regard to the rest of the list of
2 these things, there doesn't seem to be any dispute. So,
3 as to 3540, 3541, 3542, we will put that on the record
4 on Monday, but as to the remainder, except where they are
5 crossed out on this Exhibit 45 for identification, all
6 defense counsel agree that they have received everything
7 that is on there.
8

9 MR. MARTIN: If your Honor please, may we move
10 to reopen the case to examine the witness just for the
11 purpose of examining the witness after looking at the
12 3500 material?

13 THE COURT: No, I'm sorry. The Government
14 says they gave it to you. Mr. Direnzo says he thinks
15 he got it. Mr. Hopper knows he got it, and Mr. Hafetz
16 says he's not sure.

17 MR. MARTIN: If your Honor please, I'd like to
18 point out, even on the Government exhibit, those numbers
19 that are mentioned are written in ink, they're written in
20 a totally different time than the rest of the material,
21 even on the exhibit going into evidence. The grand
22 jury testimony -- maybe we can see it, to see if in
23 fact Mr. Direnzo got it.

24 MR. KENNEY: The only thing that is in a different
25 ink, your Honor, is the matter relating to Mr. Wall whom

1
2 the Government didn't expect to call.

3 THE COURT: It's true, the rest is in the
4 same handwriting, Mr. Martin. Give it back to Mr. Kunney.

5 MR. DIRENZO: I was going to suggest, your
6 Honor, Mr. Martin can look at it, we can look at it.
7 We may be talking about nothing.

8 THE COURT: Well, he said he'll show it to you
9 or go down to his office when we finish here.

10 MR. DIRENZO: All right.

11 THE COURT: Mr. Direnzo and Mr. Hopper, I
12 received requests to charge from you at 1:30 this
13 afternoon.

14 MR. DIRENZO: That's correct, your Honor.

15 THE COURT: They were supposed to be submitted
16 on December 7th.

17 On December 18th, during the course of the
18 trial, I pointed out that you were eleven days late in
19 submitting the requests to charge, and I gave you until
20 4:00 o'clock the 19th to submit them. They weren't
21 submitted then. Yesterday afternoon when the case was
22 completed, I was ready to rule on the requests to
23 charge, but pointed out I hadn't received any requests
24 from you as of 5:36 or so last night.

25 I gave you until 11:00 o'clock this morning

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2 to get them to me so I could read them before I came
3 down to rule on the requests to charge. I went out to
4 lunch at ten minutes after 1:00 and returned at twenty
5 after 2:00, to meet my appointment at 2:30 with you,
6 and I find these requests to charge received at 1:30.

7 I have not read them and I will not read them.
8 You can put them in the file, Mr. Fresso.

9 THE CLERK: Yes, your Honor.

10 THE COURT: Now I will rule on the requests to
11 charge.

12 Government's requests to charge:

13 Request No. 1 is denied except as charged.

14 Request No. 2, denied except as charged.

15 Request No. 3 is granted.

16 Request No. 4 is denied. I deny it because I
17 do not read to the jury the wording of the statute in
18 haec verba. I explain what it means to them.

19 Request No. 5 is denied except as charged.

20 Request No. 6 is denied except as charged.

21 Request No. 7 is denied except as charged.

22 Request No. 8 is denied except as charged.

23 Request No. 9 is denied except as charged.

24 Request No. 10 is denied except as charged.

25 Request No. 11 is granted.

Request No. 12 is denied except as charged.

Request No. 13 is denied except as charged.

Request No. 14 is denied except as charged.

Request No. 15 is granted.

Request No. 16 is denied.

Request No. 17, you submitted an amended
Request No. 17, Mr. Kenney.

MR. KENNEY: That's correct.

THE COURT: I will rule on the amended Request
No. 17: Denied except as charged.

Request No. 18 is denied except as charged.

Request No. 19 is denied except as charged.

I should point out to you, Mr. Kenney, that
I read the citations, and one of them certainly, United
States v. Beverly has absolutely nothing to do with
malice aforethought.

Request No. 20 is denied except as charged.

Request No. 21 is granted.

Request No. 22 is denied.

Request No. 23 is denied except as charged.

Request No. 24 is denied.

Request No. 25 is denied except as charged.

Request No. 26 is denied.

Request No. 27 is denied except as charged.

Request No. 28 is denied except as charged.

Request No. 29 is denied except as charged, except that I will not marshal the evidence and I do not charge the jury regarding the protection of the public.

You have submitted, I think, a supplemental request to charge, No. 19-A, which is denied except as charged.

Then you have some other supplemental requests to charge:

No. 28-A, I gather 28-A is directed against Rippy, is that not correct?

MR. KENNEY: That's correct, your Honor.

THE COURT: Well, that will be denied, then, in view of the fact that the charge has been dismissed as to Rippy.

MR. KENNEY: But it's admitted as against the other defendants with regard to the element of knowledge of the mail truck.

THE COURT: I will deny except as charged as to them.

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Request No. 29 is denied.

I have requests to charge from the defendant Vincent McCloskey.

Request No. 1 is denied, except as charged. Of course, we are not dealing with informers here; we are dealing with accomplices.

Request No. 2 is granted.

Request No. 3 is denied, except as charged.

Request No. 4 is denied, except as charged.

Request No. 5 is denied, except as charged.

Request No. 6 is denied, except as charged, but Mr. Martin, I do not charge "the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt about the defendant's guilt after careful and impartial consideration of all the evidence in the case." That appears as the third sentence in the first paragraph of your request.

Similarly, I do not charge what appears at the bottom of the page, which reads, "A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jurors do not feel convinced to a moral certainty that the defendant is guilty of the charge." That charge has been specifically disapproved by the Second Circuit.

Number 7 is denied, except as charged.

Number 8 is denied, except as charged.

Number 9 is denied, except as charged.

Number 10 is denied, except as charged.

MR. MARTIN: I withdraw numbers 11 and 12.

THE COURT: You have two number 13's, called alternate charge - 1 and alternate charge - 2. They are both denied as not properly setting forth the law on accomplices. I should point out that the second and third paragraphs of alternate charge number 2 are inconsistent.

Number 14 is denied, except as charged.

We then come to number 15, which consists of six pages of what is obviously printed material cut out and inserted as a single charge. I can't rule on a request of that type. I deny it.

For example, under Request No. 15 there is a number 11, which says, "The defendants know that the merchandise in question was a part of an interstate shipment, and that they knew it was stolen while moving in interstate commerce." It has nothing to do with this case.

Number 16 under Request No. 15 says, "The mere fact that ten persons are on trial together cannot be considered as indicating that they participated in a common plan." We are not dealing with ten persons and there are

other instances where there are inconsistencies and inapplicability.

Number 16 --

MR. MARTIN: Withdrawn, your Honor.

THE COURT: 17 is denied. I should specifically point out to you that you have requested in number 17 that the jury must be satisfied beyond a reasonable doubt that each defendant knew of the proposed killing in advance, and planned and encouraged it. That is completely wrong.

The next paragraph says, "The defendants in this case cannot be convicted, in the absence of proof beyond a reasonable doubt, of their knowledge, connivance or consent to the killing of the decedent." That is absolutely wrong.

The next paragraph says, "In order to convict the defendants the jury must be satisfied beyond a reasonable doubt, that the defendants, and each of them, knew of the proposed killing in advance and planned and encouraged it."

That, of course, is wrong.

Number 18 is denied.

Number 19 is denied, except as charged.

Number 20 again is a charge similar to 15, which has printed material cut out. It has some 11, I suppose, subdivisions. Most of them are repetitious of request to

charge 13 and request to charge 14, and there are internal inconsistencies between the subdivisions themselves. Therefore, I deny request 20.

Request No. 21 is called "Miscellaneous," and has a conglomeration of printed material cut out and pasted together. That has to be denied in toto, because I can't cull out one from the other. For example, 2, 3, 7 are completely in error -- in fact, number 3 refers to the law of the State of New York. We are not dealing with the law of the State of New York.

Subdivision 7 of 21 reads, "Before the jury may convict the defendant of any of the counts in this indictment, they must find the offense charged therein is proven beyond a reasonable doubt by evidence which is corroborated in every material respect." That is not the law in the Second Circuit.

The defendant Rippy's request to charge -- Request No. 1, in view of the dismissal, is not pertinent.

MR. HAFETZ: 1 and 2 will be withdrawn. 1 relates to Count 1 and 2 relates to Count 1. They are withdrawn.

THE COURT: Request No. 3 is denied.

You submitted a supplemental request to charge. Well, that is denied, except as charged. Of course, I am going to charge something along those lines, because I read

1 to you my proposed charge.

2 MR. HAFETZ: That is the alternative requests?

3 THE COURT: You called them alternative. I am
4 stating to the jury all they had to know was that a truck
5 was to be stolen, and it makes no difference whether it was
6 a postal truck. We discussed that yesterday when I read the
7 charge.
8

9 MR. HAFETZ: That is at the time of his partici-
10 pation in the event?

11 THE COURT: At the time he sent a fellow up here
12 and paid his way to come up and expected three or four
13 hundred thousand dollars from the robbery, and that in con-
14 junction with the proof, if the jury believes it, he knew
15 it was involved in a crime, at that time whether he knew it
16 was a postal truck or not makes no difference.

17 MR. HAFETZ: I understand that. I was not
18 focusing on postal. I think you have answered my question.
19 At the time of his alleged participation, the instruction
20 relates to as far as his knowledge of the truck.

21 THE COURT: That is right. In other words, if
22 you confine yourself solely to what the jury may find from
23 the proof at the time he sent Terry up here, even if he only
24 knew it was a truck, he is an aider and abettor, despite the
25 fact that it turns out to be a postal truck.

1
2 MR. HAFETZ: Truck robbery.

3 THE COURT: I suspect hijacking and robbery
4 were used interchangeably in this case.

5 And your second request is denied.

6 MR. HAFETZ: That is the second part of what
7 I labelled the "alternate request".

8 THE COURT: He doesn't have to know about the
9 robbery in the other place; he knew about this one and
10 that is what he is charged with.

11 Now, I think in order to protect your record,
12 each counsel should make motions to acquit at the end of
13 the entire case. This did not occur yesterday. We will
14 re-open the case to that extent.

15 MR. DIRENZO: I now move pursuant to Rule 29b
16 and repeat the motions as made pursuant to 29a with the
17 same full force and effect as if set forth with particularity
18 here.

19 THE COURT: Denied.

20 Mr. Martin?

21 MR. MARTIN: I join in Mr. Drenzo's objection.

22 THE COURT: Motion denied.

23 MR. HAFETZ: I make the same motion.

24 THE COURT: Denied.

25 Mr. Hopper?

1 MR. HOPPER: I make the same motion and would
2 like to add to it, that with respect to the defendant
3 William McCloskey the government has produced testimony from
4 two witnesses that the defendant William McCloskey partici-
5 pated in this crime. However, the government has produced
6 testimony from two other of its witnesses that the person
7 who played the role of Billy, as testified to by the others,
8 was not in this courtroom, and, therefore, was not William
9 McCloskey. They did not in any way indicate that they did
10 not have the opportunity to get a good look at that man.
11 In fact, Mr. Kenney brought out that the defendant Mann saw
12 him on four occasions, on one occasion had a conversation
13 with him in this bar in New Jersey.

14 I think there is a mutual repugnance in the
15 government's case, and I think it could lead only to specu-
16 lation on the part of the jury which they should not be
17 permitted to do.

18 THE COURT: Denied.

19 I expect counsel to rigidly adhere to the time
20 schedule that we agreed upon last evening. My consent to
21 have all the summations in one day was predicated on that.
22 I will strictly enforce the time schedules on each counsel.

23 MR. DIRENZO: If it should develop, your Honor,
24 that any counsel shortens his time, could that be allocated
25

1
2 to us in a group, so that the time allocated for each of the
3 totality of the summations will not go beyond the time
4 allotted?

5 THE COURT: No, I wouldn't do that for several
6 reasons, Mr. Direnzo. In the first place, even with the
7 schedule we now have set up, I can't see Mr. Kenney getting
8 through before 4:15, which is later than I expected. I
9 originally wanted to limit Mr. Hafetz and Mr. Hopper to 30
10 minutes, and they frankly chiseled me out of five more
11 minutes, which I agreed to, putting Mr. Kenney later than I
12 want him to be.

13 Secondly, I don't see how Mr. Hafetz can spend
14 35 minutes on his case. If he does, he really likes the
15 sound of his own voice.

16 MR. HAFETZ: I doubt it will go 35.

17 THE COURT: Mr. Hopper may need 35. But the
18 fundamental question is that you and Mr. Martin are dealing
19 with exactly the same evidence, aside from a few instances.
20 The witnesses have put your client and Martin's client
21 together, so you are dealing with exactly the same evidence.
22 Mr. Hopper, to a lesser extent, because Billy isn't brought
23 in that much. But when he is brought in, he is brought in
24 solely when they are speaking about Tommy Carroll and Mike
25 McCloskey. The result is, you are having three and a half

1 hours of summation on the exact same testimony, nothing
2 added for anyone, nothing subtracted from anyone. There has
3 been no defense in this case. Your whole attack on summation
4 is, as I can see it, that the government's witnesses are liars
5 and cheats and frauds, and you can't spend three and a half
6 hours proving that. I admit there are some glaring discrepan-
7 cies in their testimony, but some are picayune.
8

9 Mr. Martin makes a big to do about whether Terry
10 Myers took a train or a shuttle down the morning he went to
11 Washington. I don't think that proves anything that is
12 helpful to acquit his client, but that is his business. But
13 when you have three and a half hours to summarize that sort
14 of testimony, I think that is sufficient.

15 So if anybody finishes earlier, you won't get
16 any more time.

17 And, lastly, instead of proceeding today with
18 minimal time to prepare for the summation, and that would
19 have been true if we had granted Mr. Martin his request to
20 sum up yoday, I think we left the courtroom about 6:15
21 yesterday afternoon or last night, he would have been called
22 upon to get up at 10:00 o'clock this morning and would have
23 had an hour and a half of summation. Now, being given three
24 days to prepare for his summation, instead of making a
25 rambling type of summation, I expect a tight, adequate, able

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2 job for your clients, and, obviously, in preparing that, you
3 will do so in less time than more time.

4 Now, you have had daily copy; I ordered it, even
5 though you were not entitled to it, under the Criminal Justice
6 Act. You have had daily copy as you have gone along. You
7 have three days to prepare for your summations. So there
8 should be no overlapping and no repetition. I think three
9 and a half hours is sufficient to discuss the evidence in
10 this case.

11 MR. MARTIN: If your Honor please, may I just
12 have one second? A lot of the evidence in this case deals
13 with the conspiracy, the first count of the indictment, and
14 there is a long hiatus and a hold-up in New Jersey. The trip
15 back and forth to Pennsylvania. And there is much that does
16 not go to the second and third counts.

17 In explanation to the jury, I think it is import-
18 ant that we can spend the time on this incidental evidence
19 that was admitted as to other crimes; I think to get this
20 point across to the jury is going to take time.

21 (Continued on page 1680.)
22
23
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THE COURT: Three and a half hours is an awful lot of time to do it.

MR. MARTIN: But, your Honor, I only have an hour and a quarter, not three hours.

THE COURT: And Mr. Drenzo has an hour and a quarter for the very same evidence.

MR. MARTIN: We each think differently on the points of the case.

THE COURT: You shouldn't think differently. It is the exact same proof, exact same story, and the defendants are all wrapped up together at the same time.

If you spend more than that, there is duplication.

MR. MARTIN: If your Honor please, they are not, they are not, because Tommy Carroll is not put into anything on that trip to Pennsylvania or on that bank robbery.

THE COURT: He is not?

MR. MARTIN: No, your Honor. The testimony is he wasn't there by these people.

THE COURT: Mr. Drenzo?

MR. MARTIN: He wasn't involved in that hold-up.

THE COURT: What are you talking about, Mr. Martin?

MR. MARTIN: I am talking about the robbery in Secaucus.

1 jkd
2 THE COURT: You said the trip to Pennsylvania.

3 MR. MARTIN: Well, I'm a little tired at this
4 point. But on the robbery in Secaucus, Carroll wasn't even
5 placed there.

6 THE COURT: He wasn't placed there but he was in
7 the conversation the night before. He is the one, according
8 to the witnesses, who set the thing up and told Myers and
9 Mann that's what they were supposed to do.

10 MR. MARTIN: According to Turner.

11 THE COURT: But I am saying it is the same testi-
12 mony and three and a half hours is plenty and giving you --
13 you only asked for an hour and a half to start with,
14 Mr. Martin.

15 MR. MARTIN: Well --

16 THE COURT: Listen, Mr. Martin, you asked for an
17 hour and a half. If I gave you an hour and a half this
18 morning, from 10:00 to 11:30, we would have gotten a rambling
19 account from you because you would have had a couple of hours
20 of preparation for this summation. You are now being given
21 three full days with the transcript before you, and don't tell
22 me you can't cut an hour and a half down to an hour and
23 fifteen minutes with adequate preparation.

24 MR. MARTIN: I would have been up all night if I
25 was --

1
2 THE COURT: We still would have ended up with a
3 terrible summation, but now you are going to have three full
4 days to prepare, and the three full days aren't to increase
5 it, the three full days is to make it a much more presentable
6 and better summation, and you can certainly cut 15 minutes out
7 of a summation with three days preparation.

8 MR. MARTIN: I don't even think the hour and a
9 half is enough.

10 THE COURT: You requested the hour and a half.

11 MR. MARTIN: We were talking informally. I
12 didn't think we would be pinned down to that at the time.

13 THE COURT: Mr. Direnzo said that he normally
14 goes -- and Mr. Direnzo can say whether I am correctly
15 quoting him or not -- he normally goes an hour and fifteen
16 minutes to an hour and a half in summation, and you said
17 that's good enough for me.

18 MR. MARTIN: I said if he twisted my arm.

19 MR. DIRENZO: I also said I don't like to be
20 stopped.

21 THE COURT: I told you I always stop. When you
22 give me a commitment you are stopped.

23 MR. KENNEY: Your Honor, we have a problem of
24 logistics. We would like to bring these charts down to 110.
25 I guess the best time to do it would be Monday morning.

1 THE COURT: You can do it any time you want. They
2 are your exhibits.

3 MR. KENNEY: I know. I am not sure that we could
4 take them into 110.

5 THE COURT: Why not?

6 MR. KENNEY: There might be something going on
7 down there. I just wonder if we get locked out of this court-
8 room Monday morning or not -- is it open?

9 THE COURT: I really don't know. What difference
10 does it make? It is your exhibit. You take your exhibits
11 with you, and just show up with them Monday morning at 9:30.

12 All right?

13 MR. KENNEY: I will just leave them here if we
14 can get them Monday morning.

15 THE COURT: That's your problem. Jimmy is not
16 the custodian of your exhibits.

17 THE CLERK: I am here at a quarter after 8:00
18 in the morning.

19 THE COURT: Anything else?

20 MR. KENNEY: We need an easel.

21 THE COURT: Take them down with you now and put
22 them in your office.

23 (Trial adjourned to Monday, December 24, 1973, at
24 9:30 a.m.)
25

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Judge 2030a
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2 UNITED STATES OF AMERICA
3 vs.
4 THOMAS JOSEPH CARROLL,
5 et al.

73 Cr 855.

New York, December 24, 1973

CLERK'S

6 Trial resumed.

7 - -

8 (Jury present.)

RETURN TO COURT ROOM 803 FOR FILING

9 THE COURT: Mr. Hopper ROOM 803 FOR FILING

10 MR. HOPPER: Your Honor, Mr. Foreman, Ladies
11 and Gentlemen of the Jury:

12 We have reached that stage in the proceeding
13 where it is my responsibility on behalf of William
14 McCloskey to sum up and analyze with you the evidence in
15 the case.

16 Let me say at the outset that what I say to
17 you is not evidence. His Honor will instruct you, I am
18 sure, that that is the fact.

19 Let me also say that my memory of what was
20 testified to here, if I refer to it, is not controlling.
21 It is your memory that controls.

22 If something is critical, I am going to read
23 it from the record to you.

24 If my reasoning and arguments to you make sense,
25 then I ask you to accept them. If they do not, reject

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1
2 them.

3 First, may I have the indictment?

4 The defendant William McCloskey stands before
5 you charged with the crime you have heard in an indictment
6 filed on October 17th of 1973. The other defendants
7 stand before you on indictment originally charged June 19th
8 of 1973.9 When I get down to the basic accusation against
10 Billy McCloskey, it is really made by Turner, and it is
11 made by Chester Crawford. And they say to you that
12 William McCloskey's role was to advise when the truck left
13 the bank on Maiden Lane. That was his function.14 Now, let's get back or get to the five-man job
15 aspect in this case.16 Recall that Myers and Mann on June 7th, in
17 Washington, when they gave their initial statement, said
18 it was a five-man job, five men at the scene?19 Now, Myers is a very bright man, despite the
20 fact that he was asked how many men were at the scene,
21 and he answered five, he was able to give some explana-
22 tion as to how, in his mind, five were eight.23 But Mann was sitting alongside of him. Surely
24 two people at the same meeting do not think five means
25 eight.

1
2 This is a matter of just basic English. He
3 might come from an illegal world, as he says, but we
4 are dealing with fundamental English. He said five men.

5 One man to drive the van, two men, one to take
6 the driver, one to take the guard, one man to drive the
7 postal truck away, and one man to follow in a car, to
8 pick up the two gunmen after they had tied up the driver
9 and the guard.

10 Now, from the very outset I have been pondering
11 something that Mr. Kenney said in his opening, that is,
12 that Billy and Tom were supposed to be up on Maiden Lane
13 to report when the truck left, and I looked at that map
14 and I figured, myself, well, how could they get back before
15 the truck?

16 You may recall that at one particular, Mr.
17 Lawrence that when he left the station he went the wrong
18 way on this street.

19 I am sure in your memory you have seen govern-
20 mental vehicles operate; it just couldn't make sense to
21 me that he could get down there before him.

22 Now, these are some of the things that Mr.
23 Kenney promised you he would prove in his opening.

24 He says on April 5th Tommy Carroll left Billy
25 McCloskey at a car -- this is at the Federal Reserve Bank --

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2 and he drove around. There hasn't been a lick of evidence
3 that that happened.

4 There has been testimony that that is what
5 those two people were supposed to do, but no evidence that
6 anyone saw him in front of that bank.

7 Billy McCloskey observed the United States
8 Mailtruck in question with a driver and a guard on it.
9 He told Tommy Carroll to get back into the car.

10 We haven't heard a word about that. That is
11 what he promised he would prove to you.

12 And it bothered me when he was saying it,
13 because if he was at the scene, then he was at the scene.
14 But it was a role that I still could not believe was to
15 be performed.

16 Let me show you the route that Lawrence took.

17 I am reading from page 60 of Lawrence. He is
18 the driver of the United States Postal Truck.

19 At line 18:

20 "Would you show us how you approached the Peck
21 Slip station with your mailtruck? Which street do you
22 come up?"

23 Again referring to the capital X where the bank
24 is, "I would come up Maiden Lane, then Nassau, come down
25 Maiden Lane, take Pearl Street, Pearl Street here, all

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2 the way to Peck Slip on Water and into here."

3 Now, you have to remember, this little box here
4 which says PK, looks like it is some kind of structure,
5 but remember the evidence, that is not a structure, there
6 are cars parked there.

7 Peck Slip at this point is a two-way street.
8 Here is where the van was located, lying in wait.

9 Now, from here to here is one, two blocks,
10 double-width street.

11 You have heard testimony as to the size of this
12 truck, 5-ton vehicle, the housing alone at least 20 feet,
13 12 feet high. I say to you from that point it would be
14 ludicrous to accept the fact that someone had to come down
15 from the bank and report when it left. They would see it
16 arrive.

17 Now, in terms of its arrival, was there enough
18 time after that happened? Let's again look at Mr. Lawrence.
19 And remember here, remember about the lock and the truck.
20 When this truck arrives at Peck Slip, they got to find the
21 dispatcher because it has got a rotary lock. They unlock
22 the vehicle and then they unload what is destined for the
23 Peck Slip Station, pick up what is going to the station.

24 And I am reading from page 97 of Lawrence's
25 testimony, line 16:

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"Can you recall approximately what the length of the loading and unloading time would be at Peck Slip?

"A Not precisely, but it is about 15 and 20 minutes."

So after the truck comes across Water Street, in full view of the people in that van on the corner, they have 15 to 20 minutes to move two blocks up Peck Slip.

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2 Now, this is really not a minor point or a minor
3 inconsistency. Myers in his testimony does not even refer in
4 any way to anyone performing a function that they would be
5 told when the truck arrived or when the truck left. I will
6 read you his testimony. This is Myers being questioned by
7 Mr. Kenney --

8 MR. KENNEY: May we just have the page number?

9 MR. HOPPER: Yes, it is page 611, and the
10 reference is to Friday, March 30:

11 "Q When the mail truck came, will you tell us
12 what you did?

13 "A When we saw the mail truck pull into the
14 post office, Chester took myself and Geoffrey to a designated
15 spot by a small triangle where we were going to accost the
16 truck."

17 And now the reference to April 5th:

18 "Q Would you tell us what happened after you
19 reached that spot?

20 "A We saw the truck come in again and Chester
21 took my, myself and Geoffrey back up to the same spot that
22 we were at that previous Friday, on this triangle.

23 Nowhere does Myers mention having a role in any
24 way advising of the coming of that truck in any respect.

25 Let's deal with Mann. Mann goes a little further

than Myers. Myers, when talking about someone says on one occasion when he went to Pennsylvania he saw a young man. On another occasion, on April 5th, he saw a young boy. That is as far as he goes. But I submit to you he just didn't get all the information. Mann got a little more. He knew that the person was named Billy; he knew that it was Mike's brother. He meets him on four occasions, and he also gets some kind of information that Billy is assigned some role about the truck, but I submit to you with the limited contact available, the message didn't come in too clearly.

Let's see what Mann says on that point. I am reading from page 1004:

"Q Did you go any place after you got in the van?

"A Well, there was a fellow came down to the van and he said that the truck was in."

The reference to "fellow" being the fellow that he had described as Billy.

Now, as to Turner and Chester Crawford the story is that he was to tell when it left the bank. That is not a minor difference. People are trying to assign to him a role to perform in this case, and there is no role, because there are five jobs, five people.

Let's see who has pleaded guilty, who has been

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2 occasion when he went to Pennsylvania he saw a young man.
3 On another occasion, on April 5th, he saw a young boy.
4 That is as far as he goes. But I submit to you he just
5 didn't get all the information. Mann got a little more. He
6 knew that the person was named Billy; he knew that it was
7 Mike's brother. He meets him on four occasions, and he also
8 gets some kind of information that Billy is assigned some
9 role about the truck, but I submit to you with the limited
10 contact available, the message didn't come in too clearly.
11

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13 reading from page 1004:

14 "Q Did you go any place after you got in the
15 van?

16 "A Well, there was a fellow came down to the
17 van and he said that the truck was in."

18 The reference to "fellow" being the fellow that
19 he had described as Billy.

20 Now, as to Turner and Chester Crawford the story
21 is that he was to tell when it left the bank. That is not
22 a minor difference. People are trying to assign to him a
23 role to perform in this case, and there is no role, because
24 there are five jobs, five people.

25 Let's see who has pleaded guilty, who has been

described in this case as participants.

Man number one, Terry Myers; man number two, Geoffrey Mann; man number three, Jack Turner; man number four, Chester Crawford; man number five, Harry Johnson. There are your five people. You've got five jobs. Two people can't do the same job. Try to imagine two people trying to thread a needle, or three; it can't be done. It's the same thing as if you say how many people can play first base? One. Here are five jobs and five people.

Have you heard here what role Harry Johnson played? Five jobs. I ask you to keep that in mind.

Now, the second reference, again by Mann, reading from page 1020:

Q And what did you do when you got to the van?

A We waited. I believe it was Chester said that the same fellow that was coming back and tell us when the van was in again."

Now, here is Mann with a little more information.

Now, you know these people have testified, Crawford, Turner, Myers and Mann, that there was no contact, they had no contacts between them. Consider this. Myers and Mann are in Washington on June 7th and give statements under oath to the postal inspectors. They do not mention

Harry Johnson at all, don't mention any role that he was to perform, don't mention his name. In Newark, Jack Turner on June 20th, gives a statement. He does not mention Harry Johnson. Now, I submit to you we know Johnson has pleaded guilty. Johnson was there. It is an absolute impossibility for two people to tell the same line without prior contact. How could they do it? The impossible. These people did have contact. It is a necessary inference; two people in different places cannot tell the same lie without contact.

Now, contact is very interesting. Myers and Mann in a June 7th statement make no mention whatever of Billy. They add two extra men to the job, that is true. But they make no mention of Billy whatsoever.

But the summer passes, and at some point in time, again, Turner, Myers and Mann, with no contact, now introduce Billy. But the word obviously does not go out too clearly. Put him in a little bit; put him in a little; give him this job. The job gets confused as to what he is to do. They assign him a job that is totally unnecessary. It just did not happen.

Mann sees him four times purportedly; Myers twice. But that gets to a very interesting fact. Mann having met him, so he says, four times, stood up in this

1 courtroom and looked around and said, "I cannot recognize
2 the man I met." He says, "He is not in the courtroom."
3 Myers stood up -- he had met the young man twice -- and did
4 not see him in the courtroom.
5

6 You have heard some testimony about people
7 moving around in the corridors, being in cell blocks, and
8 so forth, being shown pictures. You have heard no evidence
9 that Billy McCloskey was in any of those situations. I
10 submit to you the reason why Myers and Mann did not identify
11 Billy is because they never saw him and they never saw a
12 picture of him; they never saw him in the corridors; they
13 could not come into this courtroom and get on the stand and
14 identify him; they didn't know what would happen.

15 And Myers is too smart a fellow to get himself
16 into a box. He says the name is Billy, Mike's younger
17 brother. That is the way he put him in. There is no other
18 way in the world he could identify him, from pictures or
19 otherwise.

20 Now, let's take a look at Turner. Harry
21 Johnson was involved. Harry Johnson came up. Harry
22 Johnson did the Secaucus robbery. We know that is an
23 absurdity. Crawford got on the stand and says he pleaded
24 guilty, says he is the one who went to Secaucus. Every day
25 in time right there he sits in front of you people and he

1 says Harry Johnson did the Secaucus robbery. He puts Harry
2 Johnson in the entire week. If you heard no other witnesses
3 in the case, you would say, "Great." But he just gets on
4 the stand and he rattles off dates and times; he doesn't
5 care what the consequences are. You know he is lying; he is
6 lying as a matter of record; he is lying, and at that period
7 of time he must have had scrambled eggs in his head. How
8 could he have not been a little more accurate about Harry
9 Johnson? That is an outrageous inaccuracy. His Honor will
10 tell you, if you disbelieve any witness, or believe that any
11 witness lied as to any material fact, you may throw his
12 testimony out in its entirety, if you choose.

13
14 Here is a man who sat in front of you and baldly
15 lied, and you know it. His testimony isn't worth a gram, and
16 these are serious charges.

17 You know, there are conspiracy cases where bad
18 people testify in a straightforward, candid manner. You can
19 perhaps give them credibility, even though they are bad
20 people. You know, they say bad people are less likely to
21 tell the truth than good people. Someone in a high and
22 mighty position is more apt to tell the truth. Well, in
23 this day and age I don't subscribe to that. You've got to
24 look at the motive, you've got to look at the basic story.
25 I asked you when I opened to you, I think I said two things--

1
2 I promised to be brief with you. I hope I have been. And
3 I asked you to listen to the witnesses and watch their
4 demeanor on the stand, to examine the story. I don't care
5 about their background. Each and every one of them has a
6 motive to lie and each and every one of them has told an
7 incredible tale.

8 I would like to refer to Mr. Boyd, who testified.
9 Mr. Boyd testified back in the vicinity of South Street
10 somewhere he met some people. He doesn't say he met Billy.
11 I say, if there is any doubt in your mind, or if Mr. Kenney
12 wants to tell you that he did, let him read the passage
13 where he says that. He doesn't say that. He was asked
14 about other occasions, other meetings, in Jersey.

15 By the way, no testimony as to what was said at
16 those other meetings. Some questions were asked. I am
17 reading from page 414, this is of Mr. Boyd:

18 "Q Mr. Boyd, was anyone present at those
19 meetings besides the three people whom I have mentioned,
20 Chester Crawford, Tommy Carroll and Mike McCloskey?

21 "A Yes, sometimes Dixon and Rogers, and on
22 occasion -- "

23 And Mr. Durenzo says at that point, "I didn't
24 hear that answer, your Honor."

25 I don't know whether you recall that, if you

1 don't, please reject it. Mr. Direnzo was sitting reasonably
2 close to the witness stand. Boyd on the witness stand said,
3 "and on occasion--" and his voice trailed off, so
4 Mr. Direnzo didn't hear him, and his head hung down to the
5 left side, and he said, "and on occasion--"

6 Well, his Honor interjected, "Dixon and Rogers?"
7 and Mr. Kenney says, "I believe the witness was saying, "and
8 sometimes on occasion."
9

10 And the answer is, "---sometimes on occasion
11 Billy McCloskey."

12 Again, no statement as to what was said at those
13 meetings. I read that too because I want to read you some-
14 thing else that was said. He says -- and I think this is
15 a rather unimportant point; maybe you feel the point is
16 important -- and this of Paul Crawford, and I am reading
17 from page 466, where there was a question about the telephone
18 number, whether he tore it up or what he did with it:

19 "Q What is the number?

20 "A I don't remember now, because it's been
21 so -- and I have had so much pressed on me about this case
22 that I do not remember the number now."

23 Think about that in terms of Mr. Boyd's statement.

24 One further point I would like to make, perhaps
25 two. One is that when I sit down in the order of business

1 in a trial, I can't get up again. I think that is probably
2 a good thing, because if I could get up again, Mr. Kenney
3 would get up again, and we'd probably be here for a week.
4 If I have said anything to you that makes sense, please try
5 to hold to it if you accept it. And when he says something,
6 try to match it up to what I have said. I think the
7 evidence overwhelmingly supports the fact that Billy
8 McCloskey was not involved in this. But that is not the
9 test for you. I think it does, but that is not the test.

10 (Continued on page 1699.)
11

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The test is, is there a reasonable doubt? That is the other end of the spectrum. That means if you think maybe he did get involved in this, maybe he did, the question is, do you have a reasonable doubt about his involvement?

And in this case, I think you have to have a reasonable doubt.

There is one further point. Two of the government's witnesses -- these are their witnesses -- Myers and Mann, have said to you, the person known as Billy is not in this courtroom. That is affirmative proof from the government's witnesses.

Two other government witnesses say he was there.

On any analysis of this case, that has to establish in your mind a reasonable doubt.

Thank you.

THE COURT: Mr. Hafetz.

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MR. HAFETZ: May it please the Court, Mr. Foreman, Ladies and Gentlemen of the Jury:

At this time I have the privilege of making my closing address to you.

I would like to thank you. My client has asked me to thank you for your careful consideration and courtesy throughout the trial, and I am certain that you will render a fair verdict in this case.

Now, let me state at the outset preliminarily several fundamental principles which have been mentioned, and I am sure you will keep it in mind, as you deliberate on this case.

First, the defendant is presumed to be innocent in this case. The government has the burden, a burden which never leaves them for a minute, for a second, throughout the trial and the entire time that you sit in the jury-room, of convincing each and every one of you beyond a reasonable doubt -- the key words -- beyond a reasonable doubt that the defendant is guilty of the charges that the prosecution has brought.

Unquestionably a very serious thing happened here. A man was killed. You have heard that testimony.

However, by the same token, and precisely because the charge is so serious, the consequences are so

serious for my client, should he be convicted of the charges, and so I ask you that you must insist, in deliberating on this case, upon quality evidence, upon evidence that hangs together, evidence that meshes, evidence that can convince all of you, in your mind, to erase doubt beyond a reason before you can render a verdict against Bob Rippy. Not a verdict based on suspicion, not a verdict based on a maybe, on a conjecture, but clear, convincing, solid, quality evidence that convinces you beyond a reasonable doubt.

I submit the government has utterly failed to do that.

Now, let me state that I will not have the opportunity of being able to get up to answer the arguments that Mr. Kenney makes. He has the privilege of making the last statement to you. However, I will try to anticipate, as I talk, some of the arguments that he will make. I think they will answer everything that he says.

If I omit anything, I ask you not to be limited to what I say, but I rely upon your own good sense to supply the answers to those arguments.

Now, the issue that you will decide in regard to Bob Rippy is on counts 2 and 3, that is, whether he was an aider and abetter in regard to the murder charged in

count 2 and the robbery charged in count 3.

Specifically, you will have to find beyond a reasonable doubt that on March the 19th and March the 20th, when defendant Rippy, according to the prosecution evidence, spoke with Paul Crawford, Chester Crawford and Myers, assuming it was him that Myers had talked to, you will have to find that on those days -- and this was before Paul Crawford and Myers left Washington to go to New York -- that Rippy, defendant Rippy had specific knowledge that there was a robbery of a truck, a hijacking planned in New York, and unless you find that, you cannot convict him of the charges, counts 2 and 3, that are made against him.

2

I will review the evidence with you on this. Again, let me state that it is not my memory or recollection that governs, nor Mr. Kenney's, nor indeed even the Court's. It is the jury's recollection of the testimony that you heard that governs, and indeed if there is any portion of that testimony that you want read to you during your deliberations, you can have that done for you.

Now, in regard to the evidence, as concerns Bob Rippy, recall there were approximately 20 or so witnesses in this case. There are only two, two who directly testified as to having conversations with him. That was Paul and Chester Crawford, March 19th, March 20th.

1 The third, Terry Myers, said he never talked to Bob Rippy,
2 but even assume that it was he that he talked to, we will
3 also review his testimony.

4 In regard to the documents, the some 30 or 40
5 documents, exhibits that were introduced by the prosecution
6 in this case, not a one, not a one referred to Bob Rippy.

7 You heard numerous telephone calls, records
8 relating to calls between Washington and New York. They
9 emphasized not a one in regard to this aider and abetter,
10 this member, this joint participant in a murder and
11 robbery charge, not a breath of Bob Rippy in any of those
12 records.

13 Not a word in any of the testimony that Bob
14 Rippy ever left Washington, that he was ever present in
15 New York throughout the intricate planning of a robbery
16 of a truck, of a robbery of a payroll in New Jersey, of
17 an attempted robbery of something else in Pennsylvania.
18 Not a word. Not a word.

19 The man was never there. All you ever heard
20 was testimony concerning some brief conversation with him
21 March 19th and March 20th.

22 Let's consider that.

23 The first witness to mention his name was Chester
24 Crawford. Chester Crawford, you recall, stated that he

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had gotten a telephone number of Bob Rippy from his sister or sister-in-law. Paul Crawford said that wasn't true, he had gotten a number from him. But, in any event, let's review Chester Crawford's testimony as relates to Rippy.

And we find, Mr. Kenney asked him for his best recollection, the one and the only conversation that was testified about between Chester Crawford and Bob Rippy, and that would be the only place, the only person from whom Rippy could have gotten knowledge as to what if anything was being planned in New York. This is the man that it had to come from, and let's listen to what he said.

A question as to his best recollection of that telephone conversation with Bob Rippy on or about March the 19th, before Paul Crawford and Chester Crawford came to see -- before Paul Crawford and Myers came to see Bob Rippy.

His answer was, "Well, I asked Rippy did he have any friends down there. He told me yes, and he told me he would send a fellow up there to talk to me, and he asked me what it concerned, and we didn't discuss the details over the phone, so he said, 'Well, I'll send up a fellow, Paul, my brother will come with me, and I'll talk with him.'"

Not a word, not a mention about a hijacking, an armed robbery of a truck, a crime of violence, a stick-up, a hold-up, anything that you must find to be convinced, for the prosecution to prove the case beyond a reasonable doubt against Rippy. It just isn't there.

Confirming it, we find that on the next day or the day later, when Myers came to Washington, Chester Crawford is asked, at the first meeting, "What did Myers say?"

"We talked. And he told us that Rippy had sent him up here and he wanted to talk and he came to see what it was all about."

"What it was all about."

Obviously there was no knowledge by Rippy as to what was going to happen in New York.

The prosecution's own witness, Chester Crawford, tells you that.

I submit I could stop right there and sit down. We have reasonable doubt established in the prosecution's case.

Let's go on. Let's consider Paul Crawford's testimony confirming everything established in Chester Crawford's on the lack of proof, the reasonable doubt against Rippy.

Now, there were a series of questions asked of

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Paul Crawford that I submit are most instructive because they illustrate, I submit, not only what was in his own mind as to what in the world is Bob Rippy doing in this case, but the question that had to be in your mind as to what he was doing here.

We find these questions asked by Mr. Kenney, of Paul Crawford, at the beginning of his testimony. He is going to get him to talk about Bob Rippy.

"Q Now, directing your attention to March 19, 1973, in the middle 1973, in the middle of the month, will you tell us what was the first thing that you did in connection with this case? Mr. Crawford, tell us the first thing, what was the first thing that you did. How did you first find out about this case?

"A When I came to New York from Washington to New York.

"Q Did you see anyone in New York?

"A When I came to New York I seen Chester.

"Q And prior to that time had you seen anyone else in connection with this case?

"A No, I didn't.

"Q Mr. Crawford, did you talk to anyone or see anyone in Washington about coming to New York before you came to New York?

2 "A Before I came to New York?

3 "Q Yes.

4 "A I stopped by Robert Rippy's house."

5 Only when he was pushed could the man actually
6 think, see, possibly see what Mr. Kenney was driving at,
7 because in his mind there was no connection between Bob
8 Rippy and this case.

9 And I am sure that was the question that had
10 to be in your mind.

11 What is the connection? What is he doing here?

12 Then we find Paul Crawford going on. What is
13 the extent of Rippy's knowledge? What is the conversation
14 he had with him?

15 This was his direct testimony.

16 "Q When you went to Robert Rippy's house, did you
17 have a conversation with Rippy and Myers?

18 "A Only about, he said he had received a telephone
19 call from Chester and he wanted me to come up here."

20 Not a word about what you must find, specific
21 knowledge that Rippy knew an armed robbery of a truck,
22 a hijacking was planned in New York.

23 Paul Crawford doesn't give it to you.

24 We find that on cross-examination Paul Crawford
25 did state that when he talked to Rippy he thought that he

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2 might have mentioned a crime. However, he stated that when
3 he first made his sworn statement to the postal agents
4 six months ago there was not a word in it in talking
5 about his conversation with Rippy about a crime.

6 However, I ask you to consider this man was
7 pushed about as hard as a man could be pushed on the
8 witness stand by me to tell you if he knew the crucial
9 ingredient that you must find to convict Bob Rippy,
10 knowledge of a hijacking, specific knowledge of what was
11 planned, and the man did not tell it to you.

12 So I submit then, on the first two witnesses,
13 the only ones who acknowledge a conversation with Rippy
14 on the critical time, for him, for you to consider, March
15 19th and 20th, none of them had any knowledge, none of them
16 were able to tell you, none of them stated that he had
17 knowledge of what you must find in order to convict him
18 beyond a reasonable doubt.

19 Further, to show how there was not even an
20 association in Paul's mind with Rippy with anyone, in
21 regard to this case, we find that the only time Paul saw
22 him again, and the only person who saw him after March 19th
23 or March 20th -- you didn't hear it from Chester, you
24 didn't hear any further talks about Chester with Rippy,
25 after all this intricate planning in New York, you didn't

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hear it from Myers, that he ever saw him again, assuming it was him, after the 19th or the 20th. It was when Paul Crawford on March 26th came back to Washington, and he went to Rippy's, not to talk to him about the case or what was planned, but to get his keys. He had left his truck parked outside of his house, and that was the only way Bob Rippy ever acquired any knowledge as to what had been planned afterwards, after Paul and Chester had gone to New York.

Finally Myers comes to the stand. The first thing he tells you, he never talked to Bob Rippy. However, even assuming -- he talked to someone called Bobby -- even assuming it was him, what does he say? Myers tells you that the man Bobby mentioned a \$300,000 job, and that he was given \$500. Not a word, not a mention in Myers' testimony about this man Bobby telling him of a hijacking, of a plan to rob a truck, an armed truck robbery, a stick-up, a hold-up. Nothing of that nature. Nothing of what you must find to be convinced beyond a reasonable doubt in regard to Bob Rippy.

Furthermore, even in regard to what Myers did have to say, he is utterly contradicted by the first two witnesses, Chester -- not a word in his testimony. The only source of knowledge that Rippy would have had of what

was to happen or being planned in New York, not a word from Chester of \$300,000 or a \$300,000 job in his talk with Rippy.

You can read the record, tilt it, shake it, look at it upsidedown, any way you want, you are not going to find it.

Paul Crawford, the same. In fact, I pinned Paul Crawford down and said, "Were you there at Rippy's when Myers was there?"

Yes, he was.

Not a word from Paul Crawford about \$300,000 job being mentioned.

Paul Crawford, asked specifically, he was there, he told you when Myers was; did Rippy give \$500?

Answer, no.

Is that the quality of proof, this total contradiction, this clash between the prosecution's own witness that is going to satisfy you that you can live with a verdict of guilty on these most serious charges against Bob Rippy?

I submit the question answers itself.

However, also consider in regard to Paul, he was with Myers five or six hours on the way to New York, and he told you the man did not have any knowledge, Myers

did not have any knowledge of what was being planned, the element that you must find, that they had this knowledge from Rippy before they left from Washington.

I would say this -- further, remember these men were accomplices. These men are informers, turned State's evidence for the prosecution. Chester called Myers, and in the classic manner, from time immemorial, of informants or accomplices who are seeking to do something for themselves, and indeed, these men were -- remember, they testified, they knew and they feared the life imprisonment on count 2 and the 25 years on count 3, so they pleaded to lesser charges, and they were looking to do something for themselves. These are the men from whom you would expect not that they would subtract, delete, omit, but that they would add to the testimony something more incriminating, that they would give you or add the crucial element that the prosecution wants and needs from them to convict Rippy, the specific knowledge that he knew a hijacking or an armed robbery was planned in New York when Myers and Paul Crawford left on the 20th of March, and they, the men most likely to, the men who are looking to collect the reward, to cash in on testifying here, do not give it to you.

I submit this must -- it has to establish reasonable

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2 doubt in your mind.

3 So in regard to the testimony, I submit it
4 utterly fails to establish what the government must.

5 In regard to Myers' testimony of a \$300,000 job,
6 it doesn't give you what the government must prove,
7 specific knowledge of a hijacking or an armed robbery.
8 It is totally contradicted by Paul and Chester. Even
9 if it raised a suspicion that perhaps defendant Rippy knew
10 perhaps there was something unlawful that was going to
11 happen, remember, there are thousands and thousands of
12 crimes that could have taken place, that could have been
13 planned in New York, but they have got one specific one
14 they must convince you he knew about, specific knowledge
15 that a hijacking was going to take place, and they simply
16 haven't established it on that.

17 Now, the prosecution utterly having failed to
18 prove beyond a reasonable doubt what they must, enters
19 the star, the man who is going to give it to you, Agent
20 Dexter.

21 On direct examination Agent Dexter testifies
22 that when he talked with Rippy several months later in
23 June, Rippysaid that he knew when he talked to Myers and
24 Paul -- rather, that Chester had told them on the 19th or
25 thereabouts, that a hijacking was going to take place in

New York, Rippy had said to Chester, according to Dexter, that he couldn't go, he told Chester he couldn't go, he would get someone else, and then as an added bonus, Dexter tells you that Rippy also said, when he talked to him, he had knowledge of the law of conspiracy, and he knew that when Myers came back on his first trip and talked to him, from his first trip in Washington, that meant that it was over.

First, on that last thing, it is utterly clear from the record that Myers never spoke to Rippy on these three or four trips that he came back from to New York during the interim period. It just couldn't have happened the way that Rippy could have known about that.

Now, let's analyze what Dexter had to say. First and most obvious, we find the people most likely to have known, the only people who would have known what knowledge Rippy would have were the people who talked to him on the 19th and the 20th, Paul, Chester and Myers, assuming it was Myers, and none of them say it. They totally contradict what Dexter was telling you or would have you believe about Rippy.

However, let's go further. Let's consider the notes that Agent Dexter had, notes that were taken at the time that they spoke, the agents talked to Rippy in June

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of this year. Remember, these are trained agents.

THE COURT: What is the matter, Mr. Kenney?

MR. KENNEY: Objection, your Honor. The record doesn't reflect that Mr. Dexter had any notes.

THE COURT: He is referring to notes made by the other agent which Dexter had in his hand.

MR. HAFETZ: Indeed, illustrating the significance of the notes which I now talk about, you remember that those notes were not even given, but were requested to be produced by the prosecution and reluctantly, when the Court directed them to produce it, only then were the notes produced, and I submit this is most significant, for what did we find? Once we got these accurate notes, taken by trained agents, at the same time they sat with Ripply, let's look in the record on that.

A question by me to Dexter:

"Look at those notes, sir, and tell me where you find the word hijack."

1 I ask you not to underestimate the significance
2 of those notes in and of themselves. The absence of that
3 crucial ingredient, element, knowledge that you must find,
4 itself creates a reasonable doubt.
5

6 Let's consider Dexter's testimony further.

7 We find that in each and every other witness in
8 the case who gave a statement to the postal agents, Myers,
9 Mann, Paul Crawford, Jack Turner, each and every one of those,
10 the statement was read to the witness, the statement was
11 signed by the witness, the statement was sworn to, through the
12 power that the postal agents have to take a sworn statement.
13 Indeed, each of the pages was initialled and even where there
14 were words scratched out, the witness was asked to initial it.

15 Did they do that with Bob Rippy? Did they ever
16 show him the notes, the statement upon which they were sure
17 to base a conviction in this case? Did they ever show you
18 that?

19 The answer is no.

20 Let's look at what Dexter had to say on that.

21 THE COURT: Mr. Hafetz, you asked to be told when
22 your time was coming up.

23 MR. HAFETZ: Thank you, your Honor.

24 Let's take the handwritten notes.

25 Those, to your knowledge, and as far as you know,

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and to Mr. Luker's knowledge, was an accurate version of what Mr. Rippy was saying?

"A That's correct.

"Q But you did not show that to him and ask him to sign them?

"A No, I didn't.

"Q Did you ask a stenographer to accompany you to interview Mr. Rippy?

"A No, I didn't.

"Q Did you call for a stenographer after you had interviewed Mr. Rippy?

"A No, we didn't.

"Q You made no effort of that kind whatsoever, did you?

"A No, we didn't."

This is reliability? This is quality upon which you are going to convict this man on these grave charges?

I submit the question answers itself.

What is going on here? What are they doing with Bob Rippy?

Further, in regard to Dexter, although on direct he prided himself on being able to get up and testify without a note, he is asked on what happened, what Rippy had to say, he is asked, "When you went to see him, did you have the

statements and did you read the statements of Paul Crawford and Myers?

A I don't know. I don't remember. It's possible. I'm not sure."

Obviously he didn't want to say that, because that is where the agents would have gotten the knowledge, the information, to add into the statement of Rippey, to pyramid on what they had to come up with a strong case against him which they knew they couldn't make.

Mr. Kenney will tell you that to acquit Bob Rippey you must find Dexter is a liar. I submit they have done it for you. They have made it easy for you with their own witnesses who totally contradict what Dexter had to say.

Furthermore, his own testimony, the notes, the absence of showing it to Rippey, show the utter unreliability of Dexter's testimony.

I say to you, if you think that is perhaps harsh, consider the motive, consider the postal agent's angle in this case. This is not a theft of a letter from a mailbox. This is not a run-of-the-mill ordinary case. This was one of their own, an armed guard on a postal truck who was killed. They were going to jail everyone who's name was even loosely mentioned in connection with the case, whether or not he was guilty, he was a suspect.

statements and did you read the statements of Paul Crawford and Myers?

"A I don't know. I don't remember. It's possible. I'm not sure."

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But I submit to you, ladies and gentlemen, that that is why you are here, because suspects are not nailed, because people are not convicted on suspicion, on conjecture.

The prosecution -- and we talk about such a serious case as this-- must give it to you, they must give you the quality of evidence to erase the doubt beyond reason in your mind, to convince you all beyond a reasonable doubt of the guilt of these serious charges.

They simply haven't done that. It is not a question of smoke, so there must be fire. They must come up and there is no other way to do it, they must show you beyond a reasonable doubt, on quality, on the consistency, the solidity of the evidence, that the man is guilty.

You decide, when you deliberate, whether or not to destroy Bob Rippey's life. If you are convinced beyond a reasonable doubt, you have no choice. You must vote for conviction of these grave charges.

However, I submit to you there are many reasons for doubt. If any of them, of the many that I have suggested, are meaningful to you, I submit that you must find him not guilty of the charges.

When you go into the jury room to deliberate, you don't have the luxury of the man who went to the firing squad with blanks in his gun, who could say to himself for the rest

of his life, he never participated in whatever happened at that firing squad. Each and every one of you, in your own good conscience, must be convinced beyond a reasonable doubt before you can convict defendant Rippy of the murder, the robbery charge, must be convinced beyond a reasonable doubt that they have proven to you, from quality, solid evidence, that he knew, March 19th and 20th, that a hijacking, an armed robbery of a truck, was going to take place.

In order for you to be able to live with the decision of what you will be doing with him, in order to be able to live with the decision convicting him on these most serious charges, you will have to be satisfied in your conscience, that the prosecution has given you, has presented the basis for you to live with that decision.

I submit to you, ladies and gentlemen, the prosecution has not done that.

They have not proved the guilt of defendant Rippy on these charges beyond a reasonable doubt, and I submit that when you go into the jury room and deliberate on this case you will find him not guilty of the charges, Counts 2 and 3, against him in this case.

Thank you.

THE COURT: He will have a short recess.)

(Recess.)

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(Jury in box.)

THE COURT: Mr. Martin.

MR. MARTIN: Judge Metzner, Mr. Kenney, Mr. Carey, Mr. Hafetz, Mr. Hopper, Mr. Direnzo, Ladies and Gentlemen of the Jury:

It seems strange that we should be here on a day like this, Christmas Eve, to be discussing such a serious and tragic situation that occurred on April 5 of this year, only eight months ago. I ask that despite the holiday and the normal joy that is associated with it, that you try to listen most carefully and treat my defendant, and, I am sure, the other defendants, as generously and as wisely as you can. In each case in any experience we have in life things happen that may impress you, that may make you realize that there are many things that you can't conceive of. There is an incident like that in this case. I am referring to certain testimony by one of the government witnesses, John Turner.

My friend and associate, Mr. Direnzo, I think classically questioned Mr. Turner. The result of that questioning, while I feel it was beneficial to the defendant all of the defendants, the whole incident, I believe, left a certain sadness and sickness with you concerning our whole operation and way of living today.

1 Here is a man who testified on the stand, a young
2 man, that he spent his life, or, at least, the past two
3 years before March of this year going around informing
4 on wrongdoers and working in conjunction with a government
5 agent, that, in essence, one of the members of our own
6 government actually took this man, or this poor excuse of
7 a human being, and paid him money, something like \$2500 a
8 year, to go around and do piecework, pointing out people
9 who did or attempted to commit federal crimes. That is our
10 government; that is us; it is a government agent working
11 with this poor excuse of a man. We are responsible; we
12 pay the taxes for it. We pay part of that \$5000.

13 But that was not worst part. You may conceive
14 of a situation, one isolated situation, where a government
15 agent might say, "I need outside help," despite all the
16 resources of the government. But here it was done on a
17 regular, constant, piecework basis. Not only was he paid
18 piecework, but he was given a license, as Mr. Turner said.
19 When he was engaged in illegal and criminal acts that
20 had no federal jurisdiction, he was on his own. Anything
21 he did, he took the money, he put it in his pocket.
22 If it was a government job, he took the money and put it
23 in his pocket, went down to the FBI and said, "Give me
24 some more, because so-and-so was here and so-and-so was
25

2 here." I think this shook me and struck me like nothing
3 I have heard in years. Despite what we have been reading
4 for the past year in high governmental areas and the
5 Attorney General's office, public officials --

6 MR. KENNEY: I object to this line. The FBI
7 is not on trial here.

8 MR. MARTIN: -- it shocked me to know that a
9 government agent was supporting this man who got on the
10 stand, and I don't believe anyone can believe he told one
11 line of truth.

12 In this case we had a government agent testify.
13 I believe it was the last witness. That was the agent in
14 charge of preparing the case. I think he said he arranged
15 for the witnesses. Let's analyze the witnesses that were
16 arranged and brought into this court and who testified,
17 or testified as to alleged actual events that transpired.
18 These were people who said they were there. They saw,
19 they heard, they did, they witnessed.

20 He started off with, I think, Chester Crawford.
21 We had Paul Crawford. We had Terry Myers, Geoffrey Mann,
22 and, of course, Jack -- John Doe -- also known as Turner.
23 He put them through the paces. They did their little bit,
24 and said, "I saw here and I saw there." And after their
25 performance and after Mr. Durenzo finished with Mr. Turner,

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1 I think everyone felt that this case was out. How could
2 you tolerate listening to that? How can you put any
3 credence in any story connected with Turner. And when
4 these direct witnesses did not produce, or there was some
5 question about their credibility, to put it mildly, Agent
6 Kievit takes the stand. What does he say? Among other
7 things, about telephone calls and summarizing telephone
8 calls.

9
10 As I recollect the testimony, he says that on
11 November 13, 1973, approximately a month before the trial
12 started, long after Vincent McCloskey had been arrested,
13 long after he had pleaded not guilty, and a month before
14 he started the trial, and while he was represented by
15 counsel, Mr. Kievit said he spoke to Vincent McCloskey
16 and Vincent McCloskey said something to the effect, as I
17 recollect it, "I had been planning the job for about a
18 year. I made arrangements to deliver the truck to Larry
19 Davila, who had a packaging house in New Jersey, and he
20 didn't know the contents of the truck." He didn't say
21 he went over to the defendant Vincent McCloskey and asked,
22 "Vincent, were you driving that truck on April 5th?" No.
23 Why ask him a question like that. He didn't go over and
24 say to him, "Were you involved? Did you shoot that man
25 who is dead?" Why ask him a question like that. In an

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1
2 effort to tie in, or for whatever reason he said it, he
3 said McCloskey said, "I had thought about the job or
4 planned the job for a year, and I was going to deliver
5 the truck to Larry Davila."

6 Did he show you a statement that he had from
7 Mr. McCloskey signed saying he was advised of his con-
8 stitutional rights? That he was told he could have a
9 lawyer? Did he show you a signed statement like he did with
10 the others? Did he tell you where he questioned him?
11 Did he tell you his attorney was with him? Is it con-
12 ceivable to you that after a man has been in custody for
13 the length of time that Mr. Vincent McCloskey has been that
14 suddenly an agent would come in and say, "Hi!" and that
15 he would give him a statement such as that? Don't you
16 think that this agent in questioning and talking with the
17 defendant would have permission to talk to him, that if
18 he did he would ask him the vital point, "Did you kill the
19 man? Did you drive the truck?" Can anybody put faith
20 or credence in this little one touchy statement that was
21 put into evidence?

22 Where is the paper? How was it done? Who was
23 there? Was the question asked?

24 At all times we get a little overzealous in the
25 performance of our duties, and I guess upon occasion we

1
2 are entitled to do so. But we are engaged here in a very
3 serious business. And when you accuse a man of murder
4 in the first degree, as my client, Vincent McCloskey,
5 is accused, you don't do overzealous things. In this
6 case there is no excuse for that. Would you sit and talk
7 to a man without his lawyer being present if he has one?
8 Did he say Vincent McCloskey drove a truck on April 5th?
9 Did he say Vincent McCloskey stole a van on April 5th?
10 Absolutely not.

11 Now, where did he get the statement about Dalia?
12 I asked him on the witness stand. He had gotten that state-
13 ment about Dalia back on June 20, I believe, from Turner.
14 Turnertold him about Dalia. He told him about the packaging
15 thing. He gave him all that information.

16 Now, are we going to believe that this man
17 casually went in to see McCloskey, wherever he was, in jail,
18 and said, "Tell me about Dalia"? Think, logically, reasonably.
19 Even more important, where is Larry Dalia, if, in fact, that
20 is true. If, in fact, Vincent McCloskey had talked to
21 Dalia about driving a truck in there, any truck, why isn't
22 Dalia here? Why doesn't he come in and say, "Vincent
23 McCloskey said, 'I am going to deliver you a truck.'"
24 I suppose the implication was that Dalia was going to be
25 a fence. The government did not bring him in; the govern-

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ment does not explain why he isn't here. Where is Larry Dalia?

Besides this, this supposed planned robbery of this mail truck had to do with, as I believe some testimony in the record said, unregistered securities. What in God's name do you need a packaging outfit for and a fence for unregistered securities? No logic, no sense. It is part of the government's overzealousness, and it is part of the government's overzealousness, part of the government's overzealousness in trying these four innocent defendants. The word is "upside-down."

We hear testimony of paid informants; we hear testimony of admitted killers. You heard a man get on the stand and say, "I took a gun and shot that man and killed him." The government lets him plead guilty to a lesser count; it is willing to dismiss the other two counts. And if he testifies against four people who certainly did not pull the gun, they will recommend to the Judge that he take that into consideration in the sentence. Not only that, but they also let him testify or them testify about haphazard jobs they pulled in New Jersey, where, supposedly, they robbed a payroll with Turner, where Turner used to work. They gave immunity. "You don't have to worry about that, too." Throw in the kitchen

sink. This is your government. You are letting admitted murderers out on the street. Not only that ---

MR. KENNEY: Objection, your Honor.

THE COURT: Sustained.

MR. MARTIN: Not only do they pamper these people and you have seen them and heard them on the witness stand -- not only do they pamper them, but they pay them, and even assign a government agent to them on an individual basis. You heard Crawford and Turner say they had an agent. Lord knows who else had a government agent. These are the people going around committing crimes, and the government says to them, "You testify and be nice; let's convict these four innocent people and we will be nice to you. And you know how we can be nice to you." They have said it. They even signed documents telling them how they are going to be nice to them, or the possibilities that they were.

I represent the defendant Vincent McCloskey, the gentleman over here. I don't represent Mike McCloskey. I represent Vincent Francis McCloskey. Let's see how Mike gets into the picture. There were some statements when Myers and Mann were picked up in Washington and when Turner was picked up in Newark, they made statements to government agents; also, Paul Crawford had a statement

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2 when he was picked up and arrested -- I forget the date,
3 but I believe it was some time in June when they were
4 picked up. These statements had names in them -- Tony,
5 Tommy, Mike; somewhere they referred to Italian dudes --
6 you heard the testimony. There was also some talk
7 about Cape and Mafia. You heard these names.

8 When this case was being prepared, when the
9 agent in charge of packaging this case put it together,
10 he was stuck with those names. And when you put a case
11 together and you find the actual people who did the job,
12 Terry, who shot the man, Geoffrey, who started banging
13 bullets about the poor driver as he ran down the street,
14 Crawford, who hustled everybody at the site, and Paul
15 Crawford, who was in and out, and Harry Johnson, who was
16 in and out, and he at one point was ready to step in as
17 No. 2 man, going to take Geoffrey's place and then Geoffrey
18 was going to be the big man, he was going to take Terry's
19 place -- when you are dealing with these people, when you
20 catch these people and solve the crime, or when you indict
21 them, if the government wants to put pressure on other
22 people for other things and for other reasons, how can it
23 do it? You can get these people and you can use the names
24 they throw around. And, coincidentally or in some other
25

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way, that may or may not have happened. You can use these people, pressure them, break them, make them crack, and if you are fortunate enough from the government's standpoint, you may be able to convict innocent people for murder. You can certainly put the screws on them.

3 Suppose you were faced with an indictment charging you -- I hope to God you never are -- for murder first or assault, and a man comes up to you one day and says: "I think we can work together, and if you help me or if you work with me and cooperate, perhaps I can talk to someone and get you a reduced charge; maybe I can get you conspiracy, up to five years, maybe even a year and a half, who knows. I think you are a bad boy, but maybe I can get you murder two, and you will have a chance of getting out with no time to life."

No matter how innocent you may be or how peripheral in other areas you may be, the temptation for anybody innocent or guilty to take a deal is an overwhelming one, because you are gambling; you are gambling with a lifetime behind bars as contrasted to maybe two or three years when you can walk out in the sunshine and you can celebrate Christmas and New Year's. The temptation even when you are innocent is too overwhelming to negotiate and to deal. And, obviously, in this case the ones who

1
2 are guilty, they have all confessed to some charge or other.
3 The case has been solved. The only thing we are left with
4 are the self-confessed robbers, assassins, thieves -- you
5 name it, and they go against those four innocent defendants
6 and say, "Let's really do a job on them; let's give these
7 innocent guys murder one; let's give them assault one;
8 let's take them down the drain with us."

9
10 This Mike business, let's see how it starts out.
11 The indictment names my defendant as Vincent McCloskey, and
12 then the government alongside of it puts "a/k/a" -- also
13 known as "Mike." His middle name isn't Mike; his middle
14 middle name is Francis. You didn't hear any of his friends
15 or relatives or people who know him come into this court-
16 room and say Vincent is known as Mike's, Vinnie is known as
17 Mike, he is not known as Frank, he is known as Mike. This
18 is Vincent Francis McCloskey.

19 I asked witnesses on the stand, or one of the
20 witnesses, certainly, "Do you know a Vincent? Do you know
21 a Vin? Do you know a Vinnie? Was he ever called Mike?
22 No. Mike? Where did the Mike come from? On a little
23 indictment that says a/k/a Mike. But there is even a
24 more insidious way it comes in, and a way that can brain-
25 wash most of us, because we almost automatically respond
if something is said often enough, we all kind of want to

1 mp
2 jump back and fall into it. I find myself making the mistake,
3 and I am conscious of it. I think all of us do. If a man
4 keeps saying, "Did John Doe do this? Did John Doe do that?
5 Did John Doe do this? Did you see John Doe?" the man's
6 name very well might be Richard Doe, but if someone keeps
7 repeating it, as the prosecutor did in this case for nine
8 days, ten days, his name is going to be John Doe, no matter
9 whether it is Richard or Morgensweid.

10 Let's take a tour with the government's agents'
11 facts in this case. Let's walk through their presentation
12 and let's find out what evidence there is. Maybe we can
13 analyze it a little bit. Maybe we can analyze not only
14 what is here, but also what is not here. What questions
15 are in my mind or what reasonable inferences can be drawn
16 from the evidence that you heard and has been produced in
17 court? Let's see if we can take it perhaps step by step.

18 The first witness was the driver of the truck,
19 Crawford Lawrence. He was the young man who, you remember,
20 suddenly heard the shot, was panicked, he saw a man on the
21 side, and he took off and ran down William Street with
22 one of these people shooting after him, arbitrarily shooting
23 four shots after him, two of them actually going through his
24 jacket; he was as close to death as he could possibly be.
25 He even said he felt the bullet, and he said some of the
inside stuffing of his jacket came out. That is Crawford

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2 Lawrence, who was driving the truck that day. But he was
3 not the regular driver of that truck. He said he took
4 the route, but he didn't know what route it was going to
5 be, that the security guard, the poor, unfortunate Mr.
6 Hickey was the one who would tell him where to go and
7 give him instructions to ride that day.

8 He then went on to describe that there was
9 a green van that stopped in front of him, just before this
10 incident took place. He then said that afterwards he ran
11 down -- your recollection of the testimony, of course,
12 controls -- I am just saying what I remember, as I remember
13 it now -- he said he ran down some place, called the police,
14 the police came back and took him back to the hospital.

15 He didn't get a chance to talk to the doctors,
16 because the government people were already there and had
17 spoken to the doctors, but they did patch up his neck.

18 Now, I asked Mr. Lawrence if he had made any
19 written reports out or if anybody else had typed anything
20 out and asked him to sign it. And he said, as I recall,
21 he couldn't remember, he didn't think so. I thought that
22 was kind of strange. With an incident this serious you
23 would think that he would talk to the police and the postal
24 inspectors and other officials. And yet nowhere is there
25 any statement by the driver, Lawrence, who was on the spot.

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Also, another strange thing -- he was treated at Beekman Hospital, and there is no hospital record of his treatment.

MR. KENNEY: Objection, your Honor. There is no evidence that there is no hospital record. Mr. Martin could have gotten that record.

THE COURT: True.

MR. MARTIN: The regular driver of the truck, Mr. Lawrence didn't know him. He wasn't brought in to testify. Nor the route of the truck. Mr. Lawrence, the driver, said that Mr. Hickey took him over the route that day, but that he didn't know whether the route changed or didn't change.

There is a charge here in the 1st count of the indictment for conspiracy, charging that as far back as January of 1973 certain groups had planned to rob this specific mail in this mailtruck. It would seem to me logical that someone should have said in authority whether that route was the consistent route during that period of time. Mr. Lawrence didn't know it.

The next witness was Mr. Para, Mr. Nick Para from the post office, who introduced into evidence, I believe, the record for Mr. Hickey. And Donald Green was the ambulance driver who testified that he was on the scene,

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1
2 that he saw a lot of people around, as I remember his
3 testimony, that he, in fact, was one of the men who put
4 Mr. Hickey into a stretcher and brought him inside into the
5 hospital. As I remember his testimony, he said there were
6 many people around. As I remember some other testimony
7 in the record, there was also even before Mr. Hickey was
8 shot people outside in the street. None of these people
9 testified.

10 Miss Souvenir was the nurse on duty in Beekman
11 Hospital on that day, and she said that she attended Mr.
12 Hickey.

13 The next witness was a police officer, Patrick
14 Corcoran. He came down, and I think his testimony was used
15 primarily to establish the fact that he was in Beekman
16 Hospital during the time when Mr. Hickey was brought in.
17 He saw him there. Then he went down to the medical examiner's
18 office the next day and identified Mr. Hickey's body.

19 Besides his identification, I believe there was
20 some testimony in the exhibits that Mr. Hickey's son, I
21 believe it was, and his son-in-law had also identified the
22 body the next day, and the son and the son-in-law had not
23 seen him for approximately, one, I think, for a year and a
24 half, and the other for about three years. Otherwise,
25 I don't believe there was any direct testimony from any

1 of Mr. Hickey's family, other than what appeared in the
2 record.
3

4 Dr. Tewbeery testified. He was the doctor
5 who performed the autopsy. He indicated the path of the
6 bullet. I believe he said something to the effect that
7 it came in through the eye socket, through the right eye
8 socket, across through the head, and the bullet trajected
9 through the head and existed some place out on the left
10 rear of the head, in a kind of a slight downward path as
11 it exited.

12 Incidentally, this brings up an interesting
13 question on whether Myers' story really was that accurate
14 because, as I remember it, Myers' story was that he jumped
15 on the truck, he put his hand in past Mr. Hickey, put the
16 gun next to the driver's head and said, "Freeze." Suddenly
17 he said something happened. Hickey grabbed his hand or arm,
18 and the next thing you know, the gun went off and he shot
19 Mr. Hickey, I believe he said, in the neck. If nothing
20 else, this was obviously not so, because the bullet obviously
21 went in here through the head, from the front to the back.
22 That is in the autopsy report. Now, whether Mr. Myers was
23 hiding something or his story had not been rehearsed or
24 didn't know and was trying to make something up, I don't
25 know. But if nothing else, his credibility certainly is

shattered on that one.

Let's talk about the next cast of characters, starting with Chester Crawford. Chester Crawford somehow manages to weave himself in and out of this epic, going all the way back even to the Fall of '72, even before the period named in the indictment here charging these indictments, because as I read it, this indictment reads from on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, which I believe was some time in September, in the Southern District of New York. So, in other words, they were accused of this conspiracy from the 1st day of January. But Chester goes back before that. Chester Crawford goes back to sometime in the Fall of '72.

Now, let us say what Chester is faced with. I am not going to go through this with everyone of the defendants, because it would take too much time and bore you with repetition. But Chester Crawford right now, as I recollect and remember his testimony, is serving two sentences, for hijacking or similar crimes, one in this district for ten years, and one in the Eastern District for three years. But those terms are running concurrently, which means the outside figure is three years, not counting time off --

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1 THE COURT: The outside figure is ten years.

2
3 MR. MARTIN: I am sorry, your Honor, did I say
4 something else?

5 THE COURT: You said three

6 MR. MARTIN: The outside figure is ten, so the
7 three is fitted within that.

8 Interestingly enough also from the testimony
9 as I remember it, he happens to be appealing those cases.
10 We live in hope. You never know which way an appeal
11 will come out.

12 Also in this case, this man who was there from
13 before the start until the finish, was allowed to plead
14 guilty to murder second with the understanding that the
15 other counts, the other two counts of the indictment would
16 be dropped, and that he would be sentenced by the judge,
17 but that a recommendation would be made on his behalf depend-
18 ing on how he testified against these four people. He
19 also was granted immunity from anything he did, allegedly
20 did, with Turner and Myers and Geoffrey.

21 And I believe it was Paul, his brother Paul
22 Crawford, who alternatively said it was Harry, and he gets
23 immunity for running out to Jersey to the Secaucus hold-up;
24 he is off the hook on that, whether he did or didn't do it.

25 As he sits there, he mentions that earlier he

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1 was dealing with Boyd, Dixon and Leon. Boyd comes on
2 and testifies later, and we will touch upon him for the
3 purpose of the continuity in the order that he was called.
4

5 Dixon and Leon? Who are they? What are they?
6 They evidently were scheming somewhere along the line with
7 Chester back in the Fall of 1972. Boyd, incidentally,
8 as I recollect the testimony, wound up in jail some time
9 in March, before any of these specific acts as charged in
10 the conspiracy took place. So he was in jail and he was
11 out of the action. But Chester wasn't out of the action;
12 he was functioning all the way through. And he goes into
13 a rather lengthy, detailed story. He starts with his
14 telephone calls here and his activity, meeting his brother,
15 and then meeting Terry and Jerry, making arrangements, and
16 he progresses through the first week pretty well. According
17 to the testimony of the others, Chester is down there and
18 saying, "This is the set-up; this is what we are going to
19 do." But according to the testimony, Chester was only along
20 for the ride; he was busy working up in his place where he
21 was the superintendent, I believe on construction. I don't
22 know how many hours he put in in a day, but, certainly,
23 from the period that he is talking about, if he did all
24 the things he spoke about, he had very little time for
25 work. He didn't bring any of his records as of the time

mp

1 he worked there or didn't work during this period of time
2 to see whether or not he was on the job or off the job.
3 He is one whose word I wouldn't want to take on face value;
4 I would like some documentary background.
5

6 He said that Jack was the one who told him about
7 the payroll hold-up that they talked about in Secaucus,
8 and that he went along with that on Terry. Then there
9 is talk about guns, and it inevitably gets down to where you
10 have to analyze the testimony from Terry and from Geoffrey,
11 if you can believe it. Incidentally, if you can believe
12 any of the testimony from any of these men, you know, you
13 have to pick and choose as you see fit, or disregard it
14 totally if you see fit. Take your choice as you remember
15 it and see it.

16 But on this situation there was talk about guns,
17 and no matter who came up with it, inevitably it seemed
18 that Chester either gave a gun or got a gun. If Chester
19 was talking about it, somebody else was giving him the gun
20 and he was giving it to Jack. So they were playing ping
21 pong as to who had the gun. There were three guns --
22 let me withdraw that -- we don't know if there were three
23 guns, but, somehow, it seems there are a couple of guns
24 around, again, if you can believe these people in anything.
25 There was one gun obviously used killed poor Mr. Hickey;

1 there was another gun that wound up in the Hackensack
2 River; that was the friend of the informer. It appears
3 from the testimony that there was probably another gun --
4 yes, there was another gun, because Geoffrey admitted
5 firing a gun, and there is physical evidence that there
6 must be around some place.
7

8 There was testimony about the guns; there were
9 bullets. Evidently there were five bullets fired all-
10 told. At least, that is the way it appears, that there
11 was one .38 bullet that wound up in the back of the truck,
12 it would seem, and there were four bullets that were just
13 shot at random down William Street, two of which went
14 through Mr. Lawrence's jacket. We don't know where those
15 bullets are; we don't know where the guns are; we don't
16 know where that gun in the Hackensack River is; we don't
17 know what calibre it was. If you can believe Turner, it
18 was a .22 or .38. Where is it? He has testified that he
19 dumped it in the river. He told the police, as I remember.
20 Did anybody dredge to get the gun? Did he tell them where
21 it was? According to him, he said no. I would think
22 that would be a pretty important item.
23

24 Now, rather than going into so many details,
25 during this first week with Paul Crawford, it seemed Terry
lost his car -- didn't lose it, but his car was impounded,

3 and when he went to pick it up they would not release it
4 because he needed a registration. Suddenly Terry wound
5 up on a plane or a train going down to Washington to pick up
6 the registration and then coming back.

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Carroll

1 This was during periods of time when Terry was
2 supposed to, from his testimony, and Chester's, had been
3 going places and doing things and listening and planning and
4 plotting and scheming and talking to a Mike and talking to a
5 Tony --this is while he was flitting back and forth to
6 Washington.
7

8 Then not only does he get down, gets his
9 registration, he comes back, he takes his car out of hock or
10 out of the pound and then he goes running around again.

11 There was also testimony about hotels that they
12 were staying at, and in evidence there are records of hotels.
13 There are records for some evenings of some hotels.

14 Then suddenly, in crucial areas, at crucial
15 points, when we start talking about April 5th, when we start
16 talking about other nights, there are no records.

17 Where did you sign in?

18 Gee, I forget the hotel.

19 There was some testimony about going to a hotel
20 and dividing money up, or a man by the name of Mike was
21 supposed to have rented a motel room right off the George
22 Washington Bridge. Nobody knew the name of that. Nobody knew
23 who checked in.

24 Where is the record for that?

25 There was diligent, heavy, accomplished work by

1 the government agent to go through and to dig out those
2 hotel records that are there in evidence. What about the
3 other hotel records? Do they conflict with the story or do
4 they support the story?
5

6 With the credibility of these witnesses, I would
7 prefer to have some objective documents in support of their
8 testimony.

9 Let's go to Maria Vasquez. Crawford testified
10 that he knew her. There was evidently some kind of a
11 relationship. But maybe it wasn't what you thought it was.
12 Maybe it was.

13 But anyway, it develops that he evidently had
14 access to her apartment for purposes of making telephone
15 calls, and not only local calls, but to call Washington,
16 call Jersey, call out in Long Island and there's plenty of
17 evidence about all of these calls that were made, and she
18 always let him make the calls, and in questioning Chester
19 Crawford, he said that she was there in that apartment on
20 each and every occasion that he made those calls, and he
21 specifically asked her before he picked up the telephone and
22 made the call, what would Maria Vasquez say about that --

23 MR. KENNEY: Objection, your Honor. Available to
24 Mr. Martin.

25 THE COURT: Either side can comment as they see

1 fit. The witness was equally available to both sides.

2 MR. MARTIN: We even have a long list of her
3 telephone bills in evidence. And when the man from the
4 telephone company was on the stand, I said to him, "Did you
5 bring with you the financial record of payment for those
6 toll calls that were put into evidence?"
7

8 And he said, "No, I wasn't asked to."

9 Now, who paid those bills? Did Maria pick up
10 the tab for Chester? Did Chester pay them? Where are the
11 records?

12 Incidentally, Chester also testified that he
13 didn't live in Maria Vasquez' home, but that he, as I
14 remember it, that he visited there three or four times a week.
15 But he did live in Queens. He had his own home in Queens.
16 He had his own home there with his wife and three children.
17 At least, that is what he told me.

18 It developed, though, and I believe it was my
19 friend, Mr. Dorenzo or Mr. Hopper, brought out on cross-
20 examination that Chester Crawford didn't have three young
21 children. Chester Crawford had five children, including an
22 adult son and adult daughter. He also, as I remember the
23 testimony, said that his oldest son worked for the post
24 office.

25 Incidentally, Chester Crawford's brother, Paul

1 Crawford, who more than one of the defendants here actually
2 left Washington, came up to New York, ran around on,
3 supposedly on a Jersey stick-up and participated in all
4 kinds of things, I believe he said he got some money from a
5 stick-up in Jersey, went back to Washington, and he pleaded
6 guilty to conspiracy, which is punishable from nothing to
7 five years.
8

9 Now we come back to the second week of this
10 thing, as told through the eyes and ears of Chester Crawford.
11 He says on Monday, the 26th, Terry, Geoffrey and Harry come
12 up from Washington, 11:30; meets them at the airport, checks
13 them into the Mets Hotel.

14 Notice how meticulously this is done. There is
15 always a time, there is always a date, there is always a
16 specific place, concise, when there is a card or a document
17 to support it. Anytime there is not a card or document to
18 support it, it is vague, wild, maybe you did, maybe you
19 didn't.

20 You heard me question Geoffrey on the stand, and
21 I said to Geoffrey Mann -- this is about certain hotel
22 cards -- I said, "Can you tell me the day you checked into
23 that hotel without looking at the card?"

24 As I understand or remember what he said, he
25 said, "Within a day here or a day there, but if you show me

the card, I can tell you."

Did they take these cards and carry them with them? These cards were selectively picked up and provided and put together by the government agent assembling the case.

But where were the other cards?

The next day, Chester says he took Harry Johnson to work with him. Evidently he had never met Harry Johnson before. Chester takes him up to work with him.

Incidentally, Harry Johnson, depending on whose version you listen to, is an architect; he is interested in art supplies, and yet he was ready to step in as the number two man and actually take off a driver of a mail truck, and he was going to start some kind of a store or a business from the proceeds to be received from this alleged hold-up.

Harry Johnson did not appear in court, did not testify.

MR. KENNEY: Objection; available to Mr. Martin, your Honor.

THE COURT: True.

MR. MARTIN: Am I allowed to comment that --

THE COURT: Either side is allowed to comment, but I am telling the jury that the witness was equally available to both sides and could have been subpoenaed by both sides.

1 jkd5
2 MR. MARTIN: This defendant that the government,
3 Harry Johnson, the government permitted him to plead guilty
4 to conspiracy, like it did with Paul Crawford. This was a
5 man who admittedly was there on April 5th. This is a man
6 who Geoffrey said was willing to go in and take his place.

7 It seems to me he was treated very well by the
8 government.

9 Now, would his version of what happened square
10 away with the other malactors in the case? I ask you to
11 take that into consideration.

12 And if it coincided and added to it, do you think
13 the government agent would have made arrangements to have him
14 here on the witness stand?

15 MR. KENNEY: Object again, your Honor; directly
16 contrary to the Court's ruling.

17 THE COURT: He may comment.

18 MR. MARTIN: Then, of course, Chester Crawford
19 throws the rap on Terry; Terry was the man who asked for
20 ether; he was the man who asked for rope; he was the man who
21 asked for guns.

22 And then I think later on Terry said that wasn't
23 so. that he talked to this fellow Jack Turner and he had told
24 Jack he'd need ether, he'd need guns, and I believe he said
25 he needed handcuffs. I forget, handcuffs or rope. And

eventually he said Turner got it.

Again, if you believe these people, if you believe anything they said, what they say or don't say.

I come to a very interesting date here with Chester Crawford, and, of course, your recollection of the facts controls. But as I remember it, on March 28th, after riding around, as they were wont to do, on March 28th, it reaches a point where Chester says he is down in the financial district, and somebody says to him, "Here's keys to the station wagon. Go get the station wagon."

And then Chester said, well, he walked around, but he didn't get the station wagon. He came back and he gave him the keys.

Now, this station wagon comes in and out of these various stories, and it was weaved in and out of there, I suppose, to make a point or a purpose. Quite candidly, my own opinion is that the government were trying in some way to imply that some of these defendants stole a blue station wagon. It is the drift of what I thought they were trying to do.

The blue station wagon was not missing until April 30th -- if it is the blue station wagon they're talking about -- Mr. Kenney?

MR. KENNEY: I think the record controls, your

jkd7

Honor.

MR. MARTIN: I am saying --

THE COURT: Obviously the record controls.

MR. MARTIN: It is my recollection of the record. If you disagree with me, of course, it is your recollection that controls.

This station wagon that the government is implying somehow that one of the defendants or two of the defendants stole was not reported stolen, if it was, from that lady from the rental agent, because she said that wasn't stolen until March 30th, and there is another witness in here, our friend Jack, with all of his integrity, he even goes one better; he says he saw it on the 27th, he saw it on the 28th, he saw it on the 29th and he saw it on the 30th.

And I said, as I recollect, "Mr. Turner, you saw the station wagon four days starting from the 27th?"

He said, "Yes."

The evidence in the record, the documentary evidence says that that station wagon was stolen on the 30th.

How hard, how hard can these people try to please the government? How hard can the government squeeze to make these people say something so obviously contradictory, even with the government's evidence?

That same night, busy Chester, between his work

1 and running around, and after taking station wagons, says
2 he goes over to Wall's, and he meets a man named Frank. He
3 said he waited around about an hour or two hours, whatever
4 time you may believe he did or didn't, but he said something
5 to that effect, he said they went over there and eventually
6 Frank came in, he had a gold Cadillac, it was outside of a
7 lot, and he borrowed \$400.
8

9 And he said he then talked, and I believe some
10 of the testimony says, 340, 350 dollars, and he took that
11 money and he loaned that money to Terry Myers, and Terry
12 Myers was going to take that money to go down to Washington
13 to pay for tickets and to renew his plates because the
14 plates were running out on the 30th of the month and he
15 didn't want to be illegally driving a car.

16 Geoffrey also, his plates were running out and he
17 didn't want to be illegally driving a car.

18 So Terry took that money and went down to
19 Washington. Whether he went by train or he flew, it
20 obviously took some time to go down. He obviously had to go
21 to some kind of a bureaucratic administrative office to make
22 these arrangements for the plates, and he had to pay his
23 money, pay his dues.

24 And then he comes back again. So Terry again is
25 in and out of the picture. This is twice, by his testimony,

jkd9

1 I think conceded by almost everybody's testimony, he is down
2 in Washington.

3
4 Was he down there the 28th? The 28th is a
5 Wednesday. Did he go down Wednesday, come back Thursday?
6 Did he go down Thursday and come back Friday? I will leave
7 that up to you because there was kind of confusion and
8 nobody knew quite whether it was train or plane or when or
9 how he went.

10 But it was around this time that there is a story
11 being told about leaving New York and going to Jersey to
12 a pizza place and going up, and Turner had a lead on truck-
13 loads of cigarettes, and he was going to hijack it, and these
14 guys were running around like the Gang Who Couldn't Shoot
15 Straight; they were going here and jumping and flying in and
16 out of cars and all kinds of silly things.

17 Then again, we come down to the question of
18 cars. This escapade by some of them took place the 28th or
19 the 29th. Oh, incidentally, on that money question where
20 Chester borrowed the money and loaned it to someone else,
21 and loaned it to Terry, according to them, they had only a
22 week before that taken \$8,000, and Terry said he had approxi-
23 mately, as you remember, 24, and I think Geoffrey said, net,
24 with the take-out arrangements, he wound up with \$1,800 net.

25 Now, if you can believe that one or any part of

1 jkd10
2 that one, can you believe that they also had no money left
3 the following week, that they were borrowing 20 here or
4 there and Chester had to go out -- Chester also, I think,
5 said he got a piece of this loot -- Chester also had to go
6 out and borrow some money?

7 And this is the Chester who has a candy store,
8 where he goes in to pick up money, he has an apartment
9 building, he has a trucking outfit, he has a Cadillac, and
10 he just sold a car for \$4,000. These wheeler-dealers are
11 running around with 20 bucks. There is something that
12 doesn't hang; at least one thing doesn't hang right.

13 How can you be poverty stricken and how long does
14 it take three or four or five men to spend \$8,000 cash with
15 no overhead, no expense; you just take it from your pocket?
16 Not even an income tax.

17 Then Crawford goes down now, I think it's on the
18 30th this time -- the 30th would be a Friday -- which I
19 presume would be after -- yes, if my memory serves me
20 correctly, this was after the escapade, where supposedly
21 they went to Pennsylvania, and in Pennsylvania, which is, I
22 believe, over the 28th or the 29th, depending on your own
23 memory, this is where a blue station wagon was supposed to
24 have been left because it was hot, and it had been stolen
25 and they had run through something or other -- that is, the

U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

U.S.A.,

Appellee,

against

Affidavit of Personal Service

CARROLL, et al,

Defendants-Appellants.

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York
That on the 10th day of June 1974 at Foley Square, New York

deponent served the annexed

Appellants Brief

upon

Paul J. Curran-U.S. Attorney Southern District-Attorney for Appellee

the in this action by delivering ^{his} true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 10th
day of June 1974

James Steele

Print name beneath signature

JAMES STEELE

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

